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Thesis

THE POLITICAL CAREER OF ELISHA COOKE JR.

1715-1737

by

LEE EDWARD PYNE

(A.B., Boston University, 1931)

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THE POLITICAL CAREER OF ELISHA COOKE JR.

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INTRODUCTION

Elisha Cooke Jr. was one of the outstanding leaders in the American colonies during that half century between the Puritan Revolution in England and the revolution of the thirteen British colonies in America.

Between 1620 and 1690, the English people, tiring of the absolute control of the Crown over Parliament, determined to weaken the autocracy. In 1628 the Commons refused to grant to the Crown Tunnage and Poundage for life. They also presented the Petition of Rights to the Crown, who assented to this request, wherein it was agreed that no loan or tax should be levied without the consent of Parliament. In the middle of the century (1641), the House of Commons gained control of all the military, in the acceptance by the Crown of the conditions set forth in the Grand Remonstrance. By 1690, Parliament had set such limitations on the powers and privileges of the Crown, that the legislative body became supreme. From that time, the king faded into the background; the representatives of the people became the government of England.

A century later a similar fight took place in Massachusetts. In this New England colony, the people were also showing their independence and opposition to the desires of the Crown. During the 18th century, the people of Rhode Island and Massachusetts

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A century later a similar fight took place in Massachusetts. In this New England colony, the people were also showing their independence and opposition to the desires of the Crown. During the 18th century, the people of Rhode Island and Massachusetts

found that by opposing the Crown, they too, could obtain greater powers for themselves. The leaders of the House of Representatives in the Massachusetts Bay determined to keep their royal governor in check by refusing to grant him a fixed salary. The home government finally yielded to their demands, allowing Governor Belcher to accept an annual grant. This was one victory for Cooke. The house also attempted to control other governmental expenditures by making detailed appropriations from time to time. In this way they effectively controlled the military, which is shown by the refusal of the house to grant funds for the maintainence of a fort at Pemaquid for several years.

This successful attempt by the colonial legislature to replace the authority of the Crown in Massachusetts was only possible after many years of continual struggle. The foundation of the later success of the Massachusetts legislature was laid in the 17th century. The greatest agitator for colonial freedom and independence in the latter part of that century was Elisha Cooke. Cooke served in the General Court for many years, and was several times sent to England as agent of the Province, to defend the charter and oppose the demands of the Crown. Death removed him before he had completed his task. Through the initiative and leadership of his son and successor, Elisha Cooke Jr., the assembly threw off the restraining hand of the governor and the Crown in matters of finance; much as had Parliament in the preceding centuries.

This was only one of a series of similar disputes by which

the younger Cooke kept alive the restlessness and rebellious spirit of the Massachusetts people. Through his position in the colonial legislature, he continually opposed the royal prerogative, for he had an abhorrence for anything which was "kingly". He particularly attacked the method of disposing of the rich timber lands in the Maine woods. The English authorities early saw the need and advisability of conserving the natural resources of the colonial forests in order that they might add to their security and strengthen the defence program of the British navy. Cooke was seeking personal profits from his lumber business in Maine. Since the British plans and subsequent laws hindered Cooke's freedom in this matter, he fought it continually in the legislative halls. Though started as a selfish move, this fight was enlarged by Cooke until it became a provincial problem. Cooke tried to show the people of Massachusetts how their freedom was being wrested from them. The attempts to enforce the king's rights over the timber in the northern portion of the province were stalemated, mainly because of Cooke's successful fight.

The fervent desire of Cooke to strengthen the spirit of colonial independence caused him to oppose the wishes of the governors of the Massachusetts Bay. It made no difference to him whether they were good or bad, just or unjust in their demands; he fought constantly against them, and through them their superior officer, the British Crown. This is seen in the continual and bitter opposition of Cooke and his friends, who dom-

inated the lower house of the legislature, in the matter of a fixed salary, the "king's woods", the attempt to override the governor's veto, and the refusal to appropriate money as requested. These questions all involved the rights of the Crown exercised over all the British dependencies. In many colonies there was no opposition. In Massachusetts, which was the largest, most influential, and most radical colony, events were leading the mother country and the province into open strife. Cooke was a dominating force in showing the American colonists the way to independence of action and rebellion against any attempts at tyrannical control.

It is to him we may look as the man who was responsible for keeping alive the spark of revolt, who fanned the flame, adding more fuel from day to day, creating a movement which spread beyond the bounds of the Massachusetts Bay, engulfing the united populance of the Atlantic seaboard in an organized, fervent fight for the control of their own destinies, under their own leaders, divorced from the ideas and scheming of the law-makers and autocratic rule of a king across the seas.

Cooke typified the spirit of restlessness, of local independence and freedom of thought, or rebellion against the leadership and direction of the English authorities and the Crown. It was during this period that the foundations were laid for a successful and forceful attempt of colonial America in their break with England. This period (1715-1735) is filled with a wealth of material which shows the growth of that spirit of rebellion

or revolution, which grew slowly until it broke out in serious opposition to the English authorities in the latter part of the 18th century.

This movement, of which Cooke was the leader in Massachusetts in the early 18th century, was a continuous one, dating from the days of Andros. Cooke was the voice of this spirit then, as Otis and Adams were a century later.

HIS BACKGROUND

Elisha Cooke Jr. was born December 20, 1678. He was a descendant of one of the most prominent families of Massachusetts. His grandfather was Governor Leverett; his father, Elisha Cooke, Senior, was for many years a member of the House of Representatives of the Province of the Massachusetts Bay. The elder Cooke, who was the recognized leader of the Land Bank Party, engaged in many bitter arguments with Governor Dudley, the king's representative and commander-in-chief in Massachusetts from 1702 to 1716.

After his graduation from Harvard College in 1697, where he attained the distinction of placing first in his class, Elisha Cooke Jr. entered upon a long career of public service. Although he had prepared to enter the medical profession, constitutional law beckoned to him, a call which he heeded. Deciding to follow in his father's footsteps, he entered politics. Cooke served for more than twenty years as a member of the House of Representatives. He became the most prominent and influential man in that body, early assuming the leadership of the popular party in the Massachusetts Bay.

From the diary of Samuel Sewall, we learn that Cooke was quite prominent in the local politics of Boston. He was a Justice of the Peace, and served as clerk of court as early as 1714. He was selected clerk of Suffolk County Court in August 1720. He was also chosen inspector of Grammar Schools and moderator of the town meeting at Boston the same year.

His influence in Boston was very wide-spread. He became

the recognized spokesman not only of his own party, but of the legislative body. It is said that the people of Massachusetts at one time believed the word "caucus" to be a corruption of "Cooke's house". Cooke was chosen by his many friends in the House of Representatives several times to sit with the council as a member for the Province of the Massachusetts Bay. He served five years in this capacity:- 1717, 1724, 1725, 1726, and 1728. He was first chosen to this position early in his political life, being a member of the governor's advisory board for the sessions in 1717-1718. The records of the council have but few references to him. It is assumed that he did not enter into the debates of this branch of the legislature as often as he did in the house, where he early became its recognized leader.

It is only natural to find this dynamic son of the elder Cooke stepping up from lesser political positions to the leadership of the colonial legislature, and becoming the director of colonial thought and agitation for home rule, or an independent American government.

COOKE CLASHES WITH DUDLEY

Cooke commenced his attack on the royal prerogative shortly after Dudley came to the New England colony as governor. Dudley, who was the representative of the English Crown in Massachusetts during the years 1702-1716, and Commander-in-Chief of the Rhode Island and Connecticut militia in time of war, was a forceful man, ever ready to assert his authority in an attempt to uphold to the letter any instructions delivered to him under the seal of the Lord Commissioners for Trade and Plantations, and the great Seal of the Crown and Privy Council.

Dudley and the elder Cooke had been very bitter enemies, and the animosity between them was handed down from father to son. Early in 1714 the governor and Cooke clashed over the proposed land bank, which many felt should be established to issue private bills of credit.

The promoters of the Bank of Credit of Boston, felt that with the scarcity of bills of credit issued by the province, there was need of a better medium of exchange. They proposed a private bank which would issue notes or bills of credit with a stable value, not given to fluctuation as was the case with most colonial issues of paper money. Silver was also scarce at this time. There was fear that in the absence of any "hard money" and the withdrawal of money by the government to meet obligations due, there would be a shortage in a good circulating medium. Some people believed that more bills of credit would meet this need. Many favored a private bank of credit,

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others felt that the government should issue more paper money to meet the crisis. Among the latter was Paul Dudley.

The proposed bank which Dudley and his friends opposed, was to be managed by private citizens, backed by "Land Security, as a Fund for Bills and Notes to be circulated".[1] Dudley's attacks on the institution caused the governor to stop the proceedings of the land bank group until the legislature had investigated the scheme and given its consent to the formation of the bank.

In August 1714, not having the consent of the government to organize a bank, the backers of the scheme entered into a partnership, receiving subscriptions toward the completion of their proposal. Subscriptions to the extent of 300,000 pounds were sought. "Each subscriber was to make over to the bank real estate to the value of his subscription, to be held as security for bills to be emitted by the bank, the amount of such emissions to be limited to the amount of the subscription. Subscribers were to take out and keep for two years at least one quarter part of these subscriptions, and they agreed to give credit to the bills of the bank. Any outsider might borrow from the bank on furnishing security in the same way as the original subscribers. The rate of interest to be adopted by the bank in its transactions was five per cent, and prudent restraints were imposed upon the relation of the amounts to be loaned to the value of the property".[2]

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Elisha Cooke Jr., who was selected as a director of the proposed bank, immediately set out to answer Dudley's charges in a masterful tone.[1] His reply, published in pamphlet form, attracted much attention. His championship of the cause of the bank won for him the opportunity of entering the House of Representatives the following year, 1715.

Cooke was elected to the House of Representatives of the Massachusetts Bay, to serve as a representative from the town of Boston, his first appointment of a long unbroken service. He left his position as clerk of the Superior Court of Suffolk County, being of greater service to the people of the province as a member of the legislature; where he served for eighteen years as the orator and leader of the Land Bank Party.

During the first session of the Court, May 25 to June 21, 1715, Cooke was continually appointed to serve on committees to consider petitions, to aid in settling boundary disputes between Massachusetts and neighboring colonies, to revise the acts of the province, etc. It was not long before he was chosen chairman of any committee to which he was appointed, thereby being in a position to dominate the thought of the discussion. It is easily seen that the reports of committees of the house are in most cases the work of Cooke, who formu-

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lated the wording of the reports, became the author of acts and resolves in many instances.

Cooke began at once to enter into the debates of the house. He opposed the governor's selection of Increase Mather as agent of the province. Had he but known, there would not have been a better man in England to oppose the wishes of the governor. Increase Mather, though presumably the staunch supporter of royal rights, soon fell out with Governor Dudley and failed to cooperate with him.

Because of the provisions of the charter of Massachusetts Bay, granting to the assembly rights which were unique to the king's plantations in America, disputes between the governor and the assembly were prevalent. The lower house in Massachusetts had the privilege of selecting the members of the council, which was done at the beginning of each session. Although the governor had to confirm the election, the choice of the house gave them power to pick men whose votes were more favorable to the provincial desires. The instruction to obtain the consent of the Court to the granting of a fixed salary began a long and bitter fight, led by Cooke and his friends. Governor Dudley, like each of his successors, was unsuccessful in this attempt to dictate to the legislature.

In the struggle against the prerogative of the Crown, Cooke, like his father, took a leading part. He was a man of means and position, whose influence as a popular leader was far-reaching. He projected himself into the discussions, and

year after year opposed any definite action by the house in support of the English domination of the colonial affairs. To him may the various representatives of the Crown look for their failure in carrying out their instructions to whip the General Court into submission, to gain a fixed salary, thereby divorcing the executive from all dependence on popular will.

Although there was no serious dispute between the governor and the house during the later years of Dudley's administration, the General Court had its troubles. The house and the board, could not seem to agree upon the selection of the Attorney-General. In fact, since the two houses spent so much time in debating, and because the progress of the work in the house was so negligent,[1] the governor felt it advisable to adjourn the General Court for a short time. The house was adjourned June 21, 1715.

The other two sessions of the year 1715 were also short and speedy. There was little business transacted. The time was spent in disputes between the house and the board; the latter body upheld by the governor, had his hearty support.

The governor and his advisors, the members of the council, also disagreed with the method of the house in issuing bills of credit to supply the treasury, thus drawing the fire of Cooke. The members of the assembly held that since the charter allowed that all monies should be appropriated by the lower house, they had the right to name the specific expenditures. In this way the house often directed the movements of the army. During this

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dispute, the assembly, in supplying funds for fortifications, dropped from their list the appropriation for the fort at Casco Bay, which they felt should be abandoned. The governor and the council objected to this, but the house, under the direction of Cooke, was firm. Since they came to no compromise, the governor prorogued the Court August 1, 1715.

Dudley retired from the executive position in Massachusetts in the late fall of 1715. He was succeeded by Samuel Shute. In the interval between the removal of Joseph Dudley and the arrival of Samuel Shute, the affairs of the province were cared for by Lieutenant-Governor William Tailer, a man who was sub-servient to the will of Cooke and his many followers in the House of Representatives.

SHUTE'S ARRIVAL STARTS TROUBLE

It was only natural that the tranquil period under the guidance of Liuetenant-Governor Tailer should end with the arrival of Samuel Shute in 1715; for Shute came to New England with a determination to put the people of Massachusetts, and more especially Elisha Cooke, in their place. By the time Governor Shute arrived in Boston, Elisha Cooke, at the head of the Land Bank Party, had stirred up a spirit of revolt against the governor. The members of the House of Representatives were ready to oppose any of his proposals.

It did not take Cooke long to find an opportunity to oppose the Crown, for shortly after the governor arrived in Massachusetts he became involved in a dispute over the issuance of bills of credit.

The Crown had long looked with disfavor upon the steadily declining value of the paper money put into circulation by order of the General Court of the Massachusetts Bay. He accordingly sent orders, first to Governor Shute, to see to it that the treasury was supplied with a more sound currency. To accomplish this, the Crown demanded that the governor refuse his assent to any act or acts for the "Striking or Issuing Bills of Credit in Lieu of Money without having first transmitted to His Majesty the draught of such a Bill".[1] This clause made it mandatory upon the house to limit all issuance of paper money (except that for the expenses of the government which were considered necessary and of emergency nature) subject to the approval of the

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1 House Journals (1721-1722), vol.III, p.81

Crown. The house favored the limiting of bills of credit, but evidently opposed the method proposed to that end. At least they opposed the belligerent attitude of the governor in presenting his orders to them. They held forth and debated over the instructions for several days. The governor evidently was not over cautious in keeping harmonious relations with the lower house, for the misunderstandings finally straightened out, could have been avoided had Shute desired to take the house more into his confidence.

Cooke bitterly opposed the action sought by the governor. With characteristic boldness, he denounced Shute in no uncertain terms. It was said that Cooke called the governor a "block head and intimated that the Governor was the tool of Dudley"[1] - lately deposed as head of provincial affairs in the New England colonies. This caused a personal enmity between the two men which never ceased. Several of Shute's actions and vetoes of affairs in which Cooke had a leading part may be laid to this rash and petty vituperation.

With the reelection of Cooke in 1716 to the House of Representatives, as a member from the town of Boston, the people of Massachusetts saw the beginning of an earnest and continued fight for colonial rights by this young leader. He opposed every representative of the Crown who attempted, under orders from the Crown, to establish and maintain the legal rights of Great Britain over her dependency in North America. During the six years Shute was governor of the Massachusetts Bay, he daily

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met the opposition of the majority of the House of Representatives, under the leadership of Cooke. Shute found it impossible to maintain the dignity of his office, to carry out the instructions of the Crown concerning the preservation of the woods, or the establishment of a fixed salary for the provincial governor and his assistants. Every move made by Shute was blocked by Cooke, who served in the council during 1717-1718, and was returned as a member of the house for the May session in 1719. He dominated the business and votes of that body during this and subsequent terms. Because of his unique position, he was early appointed chairman of a permanent committee on petitions which heard, investigated, and made recommendations on all petitions presented to the lower house. Cooke also framed a letter of instruction to the agent of the province, Mr. Dummer. With his close friend and aide, William Dudley, Cooke proposed a vote concerning the rights of the province on the Piscataqua River. The Province of New Hampshire forthwith amiably settled the dispute with the Massachusetts Bay. Cooke also appeared on committees to consider the payment of debts, collection of duties, taxes, etc.

Elisha Cooke, as leader of the house, did much to shape the policies of the government in solving the internal problems during Shute's administration. For over a year the Province of Massachusetts had had considerable trouble with the Indian tribes on the outposts. The Kennebec and Penobscot Indians in Maine had been particularly insolent and troublesome. It was essential

that the colony live on peaceful terms with its neighbors, both white and red. The government set itself to the task of reestablishing friendly relations with the Indians of the Kennebec, Penobscot, and Five Nations.

Cooke directed the action of the house. He was joined by William Dudley and J. Stoddard in establishing peace with the Indians on the frontiers of the province, a task undertaken in ccoperation with a committee of the board. After several conferences in joint session, the combined committee of the two houses prepared a proposal for conferences with the Indian tribes, which was accepted by the General Court.

Hardly a day passed during the rest of the session when Cooke was not heard on the floor of the lower chamber, voicing his proposals concerning the charter, bills of credit, musters, trade, excises, salaries, military affairs, petitions, etc. The records of the house during this period read almost like a diary of Elisha Cooke. Certainly no other man held such a prominent place in the political affairs of the Massachusetts Bay during the first decade of the eighteenth century.

Cooke and Shute were now bitter enemies. The two were constantly fighting for the control of power in Massachusetts. There was not room for the two of them in Boston. Each was determined that the other should bow down to his bidding.

Shute had orders from England to strengthen the royal prerogative. In carrying out the royal instructions he met with the disfavor of the colonies, especially the house under the

aggressive leadership of Elisha Cooke. Like his predecessor, Shute found that he was placed in an embarrassing position. If he was to have been successful, he would have had to serve two masters, to please two groups; one in England, and one in the New England colony. He chose to serve one, the King of England, his master. This only served to increase the hatred between Cooke and Shute.

The governor struck next. Through his influence, the judges of the Superior Court removed Cooke from his position as clerk of the court. The only charge against Cooke was that he was the enemy of the Crown and the governor, his lieutenant. On February 25, 1719, the house consented to the action of Governor Shute in suspending Cooke from the "exercise of his office as a Justice of the Peace thru' this Province".[1] This was evidently another attempt by Governor Shute to lessen the importance and influence of his most personal enemy. In fact, the governor was very much put out upon learning that Cooke had called him a block head and a tool of Dudley. This attack on Cooke was Shute's attempt at petty retaliation. Cooke, however, remained a member of the house, where he was recognized by the members as their undisputed leader.

There were also disputes between the members of the house and the governor during the remaining weeks of the May session of the General Court. In the first place, Governor Shute notified the members of the legislative body that the Court would be convened outside of Boston. The members of the assembly

1 Council Records, vol.VII, p.19

objected to this move of the governor, since it was done without their advice and consent. They fought this attempt of Governor Shute to exercise his prerogative.

The controversy between Cooke and Bridger[1] was under investigation at this time. John Bridger had been appointed Surveyor-General of the Woods in 1699. It was his duty to aid the governor in enforcing the law concerning the preservation of the "king's woods". Bridger became unpopular with the colonists, mainly because he had the responsibility of enforcing a despised law. But Cooke and his friends strongly opposed the whole system of English control, attacking the Crown through local officials such as Bridger and Shute. Cooke turned to his friends in the legislature to support him in his attack on Bridger. The governor immediately took the part of the official of the Crown, Mr. Bridger, whose authority he felt had been disregarded by the colonists and hindered by Cooke.

During the first session of the General Court held in Boston May 31 to July 20, 1721, Cooke was selected to serve on the various committees necessary to carry out routine business. He was also chosen to serve on a standing committee to hear petitions during the session of the Court. This work kept Cooke continually in the eyes of the public and his followers in the political circles of the colony. Cooke was the outstanding man in the legislative body, to whom the law-makers turned for advice on all legal questions.

Cooke was now at the height of his career as a deputy of

1 A fuller treatment of this subject will be found in the next section.

the people. All important questions were laid at his feet, and this session was full of such questions.

Cooke opposed the appeal made by Shute in 1721 to the Board of Trade to review the actions of the House of Representatives of the Massachusetts Bay. Cooke reminded the governor that the charter did not provide for any interference in the acts or resolves of the house only, by such a body in England. This appeal was brought about after a lengthy dispute between the house and the governor over the question of censorship. The house felt that conditions in the colony were not rebellious, not sufficiently serious enough to require the censorship of the truth, however caustic, by the governor.

Cooke evidently believed that the governor listened to false statements concerning the actions and desires of the house, as a basis of his appeal to the Board of Trade. Cooke was inclined to believe the governor intentionally avoided the truth. The insinuation can clearly be seen in the following section of the report of the committee which investigated the charges:-

> "it is manifest, that some persons have misrepresented to his Excellency the management of the House of Representatives in the last March sessions: and if any ill minded persons do endeavor to create and keep up misunderstandings by false insinuations between his Excellency and the Assemblies; it is a very unhappy circumstance attending us, it would be well, could the persons be discovered and not longer screen-

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ed from the just resentments of the people. And had his Excellency been rightfully informed. . . . . things would appear to him under another view and face".[1]

The house, with Cooke as leader, appear to have been dissatisfied with the agent in London as well as with Governor Shute. Several times in the latter part of the 17th century, the legislature of the Massachusetts Bay had sent agents to England to defend the colony against increased infringements in the colonial affairs by the English government. These representatives were only temporary agents, returning to the province when the issue had been finally settled. Mr. Cooke himself at one time was the selected delegate to defend the provincial cause in London.

In 1716 the Province of Massachusetts decided upon an innovation in the relations between England and the province. It was voted in the House of Representatives to have an agent in England, resident at London. It was to be his duty to negotiate the affairs of the province at the Court of Great Britain. With the consent of the board, the house then proceeded to choose Jeremiah Dummer their first resident agent. This agent was in fact the messenger and tool of the lower house, receiving pay for his services from the provincial treasury. Instructions were sent to him at stated intervals, instructions presented to the General Court for approval, after being drafted by a committee of the house. Cooke usually drafted such instructions, in fact it might be said that the voice of Cooke was the voice

1 House Journals (1721-1722), vol.III, p.40

of the house.

The office of agent became an important position. the agent was the connecting link between the home government and the provincial body politic. He became a resident attorney-general or solicitor at the Court of St. James, where he argued cases at hearings on behalf of the colonial interests. The agent acted in the capacity of our present day consular office or ambassador. Being a citizen of the province, he could present to the English authorities the provincial attitude toward their rule, their proposals and resolutions. Mr. Dummer was the first resident agent chosen by the house to represent the Province of Massachusetts. He was an efficient officer, well liked at home and abroad. Consequently, his word bore much weight with the members of Parliament when a bill was up for consideration. The English often sought the advice and attitude of the agent toward royal acts and proposals. This was the beginning of a most important and influential office in colonial affairs.

In June 1721, the House of Representatives voted to remove Jeremiah Dummer as agent of the province. It is not evident from the records what reason prompted such action. Was it because of the recent action of the king and Board of Trade regarding the clash between the house and the governor over censorship? Perhaps the representatives felt that Dummer was failing to serve the best interests of the colony, since he had allowed action to proceed without entering a strenuous protest. The council saw no just reason for dismissing Mr. Dummer, who

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had made a good solicitor for the colony. They inquired for the grounds upon which the house took such action. Cooke answered them, stating that it was none of their business. The board had no right to demand of the house reasons for their actions. Cooke notified the members of the upper house that they had no right to question the motives of the house in passing acts or resolves. The only procedure for the board to follow was to approve or disapprove any action sent up to them. The council thereupon non-concurred with the request of the house for the dismissal of Agent Dummer.

The breach between the house and the governor was widening daily, under encouragement from Cooke. The final blow came July 12, 1721, when the house adjourned itself for a week. This action was voted by the members of the assembly without the consent of the governor. In fact, though it was through neglect, the governor was not even notified officially of the intentions of the house in the matter. The governor considered this an unwarranted and extraordinary proceeding. He notified the house to resume their regular business at once. Cooke and others refused to heed the demands of Governor Shute. The some twenty or thirty who did assemble, were reprimanded by the governor, who then prorogued the Court to Friday, July 14.

When the house reassembled July 18th, the governor sent word to them that he was highly displeased at their actions. He was supported by the council in his contentions that the governor had the sole right to adjourn, prorogue, and dissolve

the Court, under the provisions of the royal charter. Since the adjournment by the house was irregular, Shute demanded an acknowledgment of their error and an apology to him.

Cooke, as head of a committee, was ordered to answer the governor. The committee set forth their reason for adjourning a week contrary to precedents, a reason which was an urgent and reasonable one, according to Cooke. They admitted, however, the error of the house in failing to notify the governor of their action, stating that it was not intentional. The governor, not satisfied with their excuses, considered the proceedings of the house a breach of his prerogative, which he jealously guarded. He thereupon demanded an apology and an acknowledgment of error by the house in attempting to adjourn without the consent of the executive. He cited as a precedent for his demands the apology of the house to Phipps. The house finally gave in, presenting their acknowledgment of error to Governor Shute.

The governor now decided, since the session had been so full of disagreeable arguments, that it was useless to proceed any longer in an attempt to get anything constructive done. He thereupon dissolved the Court July 20, after telling the house how dissatisfied he was at their conduct. He particularly blamed Cooke for much of the trouble.

When the Court reconvened in August 1721, the house and the governor resumed their unfriendly relationships. Cooke prepared a resolve asking that the sittings of the Court be removed from Boston to Cambridge. The vote passed the House

of Representatives and was sent up to the board for concurrence. This action was thought necessary because of the prevalence of small-pox in Boston. The governor refused to assent to this vote. He claimed that it was an infringement on his power of adjournment to consent to the action as presented. He stated, however, that "if the Council and Representatives desire that the Court be adjourned to Cambridge, I shall readily Grant it".[1] He would not allow the house or its leader, Elisha Cooke, to tell him what to do. To this reply the committee of the house, through Cooke, notified the governor that they were not seeking an adjournment, but the removal of the Court to a different place of meeting, a power justly belonging to the members of the Court, according to Cooke. The governor, for some reason, was stubborn about the whole matter. His answer was that he would not concern himself to make any reply.

The house immediately voted to gather together all the votes of the house passed in that session, particularly those pertaining to any misunderstanding or dispute between the house and the governor. These votes were then to be sent to William Taylor, agent in London, to be presented before the king or his representatives to show the true course of events in the house, as compared with any complaint or charge that Governor Shute might send to England. This lengthy and tumultuous session came to an end with an increased hatred between Governor Shute and the friends of Elisha Cooke.

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The King's Woods

Cooke once more attempted to overthrow the authority of the Crown in Massachusetts by engaging in a bitter controversy with Bridger, the Surveyor of the Woods, over the infringement of the king's officers on the rights and freedom of the colonists to use and control their own timber lands. Cooke had a personal interest in the problem, for he owned large tracts of timber and operated lumber mills in Maine. He engaged Shute in a heated dispute in 1716, when the governor attempted to carry out the king's orders to preserve the woods for royal use. This issue involved not only these two men, but the colonists in Maine and Massachusetts, the legislatures, the Survey-General of the Woods, and the committee on naval stores in the British Parliament. The dispute was far reaching, and extended over many years, becoming an annual struggle between the colonists and the Crown. It was a struggle of the rights of the Crown versus the rights of the local government.

Cooke had early taken an active interest in the lumber industry set up in the Maine woods, then under the jurisdiction of the Massachusetts Bay. The lumber industry early became one of the most important in that section, viz: "Scarcely was a hamlet settled before a sawmill was established. . . . . Mills followed the line of settlement in most of the colonies . . . . . In New Hampshire and Maine the lumber industry became the most important".[1] It offered a chance for speculation, an opportunity which Cooke welcomed and made use of. Cooke

1 R.G.Albion, Forests and Sea Power, p.233

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1 R.G.Albion, Forests and Sea Power, p.253

carried on large speculative operations in timber, opposing the officials of the Crown sent over to preserve the woods, even advancing the theory that the Crown had no claim to any of the woods in Maine. Not only did Cooke buy and sell land in Maine, but he encouraged the colonists to cut timber for their own use, the royal acts notwithstanding.

The Crown had a special interest in the white pine trees which grew abundantly in the Maine woods. So essential did the English authorities feel that the trees in Maine were to their naval defence, that the Crown instituted a royal preserve in Maine. They sincerely believed there was a need for conservation of such resources. By the terms of the Charter of 1691, granted to the proprietors of Massachusetts Bay, the Crown set aside part of the trees in Maine, viz: "we do hereby reserve to us, our heirs and successors, all trees of the diameter of twenty-four inches and upwards of twelve inches from the ground growing upon any soil or tract of land within our said province or territory, not heretofore granted to any private persons".[1] The Surveyor-General of the Woods was sent to the colony to act as the representative of the Crown, to see that the charter provisions were complied with. A fine of one hundred pounds was laid on anyone found guilty of breaking the law as applied by the Surveyor-General.

John Bridger was appointed to fill this position in 1699. He soon found that his job was not an easy one, especially since the colonists were opposed to the restrictions laid upon

1 Charter of 1691, in Acts and Laws, p.37

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them by the Crown. Bridger was assisted "by four deputies. So far as they could they went through the woods bordering on the sea coast and rivers, and marked the best trees with the royal arrow. Yet the owners of mills in many cases did not hesitate to cut up even the trees thus marked, though the boards and planks generally showed the transgression by their width; and there were many violent contests between the lumbermen and the King's Surveyor upon this matter".[1]

The powers at home, consistent with the mercantilist beliefs, were concerned over the naval stores to be derived from the colonies. Since their interests clashed with those of the colonists, a quarrel soon sprung up between the residents of Massachusetts and Maine, and the representatives of the Crown over the right to cut timber in the Maine woods. The assembly, under the leadership of Cooke, attacked the prerogative of the Crown as applied to the New England colonies. Cooke took the part of the colonists and lumber interests of the Massachusetts Bay. He even went so far as to assert that "the royal reservation of timber had been made when Maine was purchased from Gorges and that the acts of Parliament regarding naval stores did not bind Massachusetts under the province charter".[2] This idea was steadily opposed by the governor, Samuel Shute.

Cooke was the author of another more clever plan to circumvent the provisions of the charter which reserved "all trees of a diameter of twenty-four inches, and upwards of twelve inches from the ground, growing upon any soil or tract of land

1 G.T.Varney, Gazeteer of Maine, p.46
2 Dict. of Amer. Biog., vol.IV, p.381

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within our said province or territory not heretofore granted to any private persons".[1] The last clause became the means whereby the assembly sought to evade the law, under the tutelage of Elisha Cooke. This impetuous, but able leader of the people, considered the land bought by the Province of Massachusetts from Gorges or others, private land. Cooke saw an opportunity of creating townships therein for the purpose of settling the rich timber lands with private owners having a clear legal title thereto. The colonists would then be able, under the English law, to cut timber for their own use. This, to Cooke's way of thinking, would be perfectly proper and lawful. The House of Representatives set out to make surveys in Massachusetts and Maine for the purpose of establishing a number of townships under their jurisdiction.

Although restrictions on cutting timber were passed to conserve the New England lumber for English use, the colonists were allowed to cut the trees reserved for the king and marked with his "broad arrow", providing they secured the proper license. This license was obtained from the Surveyor-General, Bridger, who was charged by Cooke and others of malfeasance of office. It was claimed by them that Bridger allowed certain unlicensed people to cut trees provided they paid him a fee for overlooking their evident illegality. This, to Cooke, appeared to be an unjust interference with the rights of the colonists to cut their own timber. Several titles existed to substantiate Cooke's stand in this matter. The house appointed a committee

1 Charter of 1691, in Acts and Laws, p.37

1 Charter of 1691, in Acts and Laws, p.87

to investigate the charges and, upon hearing the report, upheld Cooke.

This was the beginning of a long struggle over the question of the rights of the Crown to so limit the powers of the colonists over their own land. The Crown and its supporters in England believed that the colonies should be a means of support for the mother country. The trees of Maine, necessary for the defence of the empire, were therefore, in fact, conscripted. The colonists could only see their own side of the question, when their lands and their rights were involved. It was inevitable that the struggle should occur. It is interesting to see how the colonial politicians successfully defended their position until the power of the Crown over them was a thing of the past.

The attempts of the English authorities to enforce the law forbidding the cutting of trees in Maine were not successful. There was a continuous attitude of indifference on the part of the colonies toward any cooperation in the matter whatever. The English had conceived a great plan, but it was a failure. "Admirable as this attempt at conservation was, it failed utterly. Such a system might apply in the carefully ordered community of Great Britain with its limited forest, it was grotesque on a lawless frontier. Evasions were wholesale. The various acts were searched for legal loopholes. It was asserted that once a township was laid off it was private property; and the loggers proceeded to influence the laying off of unsettled

townships where they might want to do their cutting. The act of 1729 put an end to this practice. Then the lumbermen had recourse to 'swamp law'. With a certain coarse humor, they threw deputies into mill ponds or stove in their boats, and depended upon the sympathies of the local law courts to return favorable verdicts in the suits brought against them. Meanwhile they hacked away the forest. These performances on the lumbermen's frontier were none the less lawless because they were directed against the king's representatives".[1]

Early in 1717 Elisha Cooke was elected to serve in the council or upper house of the legislature. During this term as counsellor, Cooke continued his disputes with John Bridger, Esq., Surveyor-General of His Majesties Woods in North America. He charged Bridger with evading the law regarding the "king's woods" at the expense and discomforture of the colonists. The Surveyor carried out his annoying scheme by "strenuously endeavoring by wrong Insinuations and Threats to compel the Inhabitants of Kittery and Berwick, and neighboring Towns to pay him Forty Shillings per team for each team they sent to Log and get Timber".[2] The records of the house show further that Cooke presented a memorial to that body seeking action against Bridger. The complaint against the surveyor was investigated by the house which voted "do what is proper and necessary to remedy it".[3] (A committee would ordinarily be appointed to hear such a case, listen to testimony, investigate charges, and recommend in its report definite action by the house for one of the parties.)

1 E.C.Kirkland, Hist. of Amer. Econ. Life, p.47,48
2 House Journals (1715-1717), vol.I, p.272
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The friends of Cooke, and they were many at this time, supported his action. The governor, more to show his personal resentment to Cooke than for any sound reason at all, joined sides with the surveyor. Bridger was absolved from all accusations made against him at this time.

In 1718, at the May session of the General Court, Cooke was again elected to take his seat in the council. The governor saw an opportunity here to oppose his enemy by excluding him from the council, which was done by exercising the executive power of veto over the acts of the house. Paul Dudley was thereupon chosen in his place. Cooke however, remained in the house as a representative from Boston, where he was able to carry on his agitations against the governor and the surveyor-general.

It is easy to see why Cooke was so interested in the woods in and around Kittery and Berwick, Maine. There are several notations in the York Deeds which record the purchase and sale of land and mills by Cooke and others. These transfers were not among the early speculations of the younger Cooke, but took place in June, August, and October 1718, which was the identical time of the dispute with Bridger.

Reverberations of the dispute over the "king's woods" appeared in the legislative halls of the Province House in 1718. Bridger had accused Cooke of interfering with the administration of justice, more especially in his own department of colonial affairs. Cooke filed a memorial with the house seeking action to clear him of these charges. The house and council considered

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"The Committee appointed to investigate the Memorial of Elisha Cooke Esq., having perused the several papers referring thereto, Do report as follows viz:

"That the allegations made against said Elisha Cooke by John Bridger Esq., Surveyor-General of his Majesties Woods, are not supported by the papers laid before us.

"That the said Bridger hath obstructed the Inhabitants of this Province in their just Rights and Privileges of Logging by his Arbitrary and Unwarrantable Demanding Money of them for Liberty to improve their Rights as aforesaid".[1]

As a result of the recommendations of the committee of the house, that body suggested that the colonial government seek to protect both "His Majesty's Rights" and the rights of "His Majesty's good Subjects" from any further attacks either by local schemes or by the king's officials. The council joined in this action. They went further and asked the governor to issue a proclamation to protect the charter rights of the king and the just privileges of the colonists to carry on their

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lumber industry. The governor, however, did not agree with the legislature in their approval of Cooke's actions. He resented Cooke's attitude toward the ruthless cutting of pine trees in the Province of Maine. Shute's attitude was evidently another attempt by the governor to attack Cooke personally, but Cooke seemed unpeturbed. He had won his point, which gained him many followers and enthusiastic supporters in colonial circles.

In 1719, the controversy between Cooke and Bridger was still hanging fire. Cooke again turned to the Court, seeking their support. The dispute had held the attention of committees, gone through hearings and reports for nearly two years. Cooke was upheld in his attack upon the actions of Bridger, the Surveyor-General of the Woods, who now appealed to the governor and the king to support him. The governor was more than glad to do so, considering the circumstances involved in the fight. The king too, having heard of the apparent failure of his representatives to keep the woods intact for royal use, sent instructions to the colony. The governor, in a speech of admonition to the General Court, presented the demands of the English authorities, viz:

"I have also a very strict charge from their Lordships, to take the utmost care in the preservation of his Majesty's woods, Mast Trees etc., according to the Reservations in the Royal charter, and the Act of Parliament in that case made and provided-

"And to Support the Surveyor-General of the Woods in the

Execution of his Office: Their Lordships being informed that not only great Waste is and has been Committed upon the Kings Timber, but that the Surveyor himself has been discouraged in the Execution of his Office. Complaint has also been made to their Lordships as if great Quantities of Timber had been carried from New England to Spain, and I wish there had been no ground for it; but certainly it imports us very much, by all ways possible to prevent any Damage to His Majesty by any spoil of His Woods, the carrying on of any Illegal Trade, and more especially affording any Assistance to His Majesty's Enemies in a time of War".[1]

The governor expected assistance from the Court and an adherence to the admonitions of the Crown as presented in his speech. The members of the house, however, felt that the Crown and His Lordships had heard only one side of the story. They therefore decided to present their side of the case to the Crown. By order of the house, Cooke was appointed head of a committee to answer the governor's speech, to transmit the vindication of the house to the agent, Mr. Dummer, and to join with a committee of the council to draw up a message to the king concerning the controversy.

In answer to the governor, Cooke wrote a very direct and pithy accusation of Bridger, never denying the charges of waste made in the governor's speech, but blaming the Surveyor-General for such acts, viz: "And if any waste has been committed, the Surveyor-General has been the chief if not the only Instrument

1 House Journals (1718-1720), vol.II, p.173-74

[1] House Journals (1778-1780), vol.II, p.174-74

thereof, by selling and indulging divers persons for considerable sums of money to go into the woods to cut Trees for Logs, and other Uses. . . . . Whereby their Lordships will be enabled to see who has been in a very great degree the Instrument of the Strip and Waste lately made, who is very likely to be the person that Informed, tho' not of himself".[1]

The assembly had received affidavits from several men, including a sheriff of the province, testifying as to the truth of the above. Cooke, who mentioned these documents, claimed they were from reliable sources and worthy of the governor's consideration. The Court was willing to defend Cooke either in America or England. In so doing, they incurred the wrath of the English authorities and the governor in America. Governor Shute, who disliked Cooke's statements in answer to his demands, refused to allow the house to print the record of the report. The members insisted on their right so to do, but the governor, relying on his power over the press, attempted to stop the normal recording of the proceedings. As a result of the immobility of both parties of the dispute, the governor prorogued the Court on the 10th of December, 1719.

Because of the steadfast opposition of the legislature to the governor, Shute did not reconvene the General Court that year. The regular spring session of the Court was held in May, 1720, the house convening on the 25th to swear in members. Elisha Cooke was again returned to that body as a representative from Boston.

1 Ibid, p.220

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1 Ibid, p.250

Trouble immediately arose over the cutting of trees supposably reserved for the use of His Majesty's Navy. Information reached the house March 17, 1721, that several persons had cut a great number of trees in Maine, which was then under the jurisdiction of the Massachusetts legislature. This was contrary to the charter of the province and the instructions of the Crown. Cooke's party had to grant the validity of the Crown in claiming the mast trees, but sought ways of defeating the interests of the king within the law. In the present case, since the trees were cut contrary to law, the House of Representatives took action to prosecute those guilty. Elisha Cooke and Col. Dudley headed a committee of the house to offer a proper remedy. They suggested that a committee be authorized to go into the Province of Maine, above the town of Berwick, and seize the logs, holding them for the use of the province, at the order of the General Court. Cooke here distinguished between trees with the broad arrow standing, as reserved for the Crown, but once cut, though illegally, as the property of the province. The house voted viz: "Ordered That _____,_____,_____, be appointed and fully impowered to Seize upon, Mark, and Secure the said Logs, and reserve them for the further order of this Court. . . . ."[1]

The board refused to approve this vote. It was their duty to carefully see that the provisions of His Majesty's instructions as presented by the governor, were carried out. They agreed that the logs should be seized, but stated by formal

1 House Journals (1718-1720), vol.II, p.364

vote of the council that the said logs should be held for His Majesty's use. Neither group would change its vote nor give in on the matter under discussion. Consequently, the house decided to act alone, viz: "Since they (the council) decline to join with this House in their Vote respecting the trees cut in the Province of Maine, they esteem it their bounden Duty, in order to preserve the Rights and Properties of the Province (which will also tend greatly to the service of the Crown) to take Order therein themselves forthwith".[1] Cooke was ordered to join with the Attorney-General of the Province in prosecuting persons found guilty and in carrying out the wishes of the house as above-mentioned.

The ever present question of jurisdiction over the timber in the Maine woods continued to hold the attention of the Court in 1721, 1722. Cooke was appointed to a committee to investigate the charges of poaching on the king's lumber. Cooke reported that several hundred very valuable trees had been cut during the winter. These trees had stood on land belonging to the Province of Massachusetts. It was estimated that the above-mentioned timber was, when standing, suitable for mast trees. Whether or not the trees were reserved for the use of the Crown, Cooke evidently did not care to state definitely. His keen legal mind saw a loophole in the provisions of the home government concerning the lumber. He intended to make good use of the same to the advantage of the colonial government, as seen by his report: ". . . . . .All which trees, or far the great-

1 Ibid, p.366

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1 Ibid, p.386

est part of them were immediately after being felled, cut into suitable lengths for Plank, Boards, and other Timber, ... so that tho' these trees when standing or Growing might be fit for Masting the Royal Navy, yet inasmuch as they were cut into such lengths as aforesaid, and had they grown upon such Tracts of Land, as His Majesty without all question had Reserved the Trees of such Diameter for Masts for the Royal Navy, yet as the matter is now circumstanced, it can be no Infringement on the Reservation made in the Royal Charter, or Act of Parliament, Respecting Mast Trees for this Government, now to take and convert those Loggs (sic) to their own use".[1]

This was a reasonable argument, if not an ethical one. At least it was a strategic move with no protest recorded against it. Cooke further escaped attack from his foes in the lumber dispute by stating that the province should take all means possible and necessary to apprehend and punish the guilty parties. He stated that he believed the woods should be preserved and protected for the greater increase of naval stores in accordance with the laws of Great Britain and the Province of Massachusetts.

The council received the recommendations of the younger Cooke for consideration, finding no cause for dispute. Consequently they approved the report "in toto" and recommended that the colony take proper action to seize and dispose of the logs for the best interests of the province.

The records for June 13, 1723, show that a committee was

1 House Journals (1721-1722), vol.III, p.32

appointed to "enquire into the state of the Loggs formerly cut within the township of Berwick, in the county of York, and Report what they think proper for this Court to do thereupon".[1] Cooke, with his ally and friend Dudley, were members of that committee which found that instead of felling the trees and cutting them into planks, the residents of Maine were now "boxing and barking" the white pine trees to obtain turpentine. In this report, the committee recommended that the guilty persons be prosecuted and the turpentine seized by the Province. In view of the continued statements of the house of their allegiance to the Crown, it seems rather strange that they should approve the following recommendation: "The said committee are further ordered to lease all such Turpentine Trees as they find Boxed on Province Lands, at reasonable Prices, and the money received therefrom to pay into the Public Treasury".[2] This certainly does not seem to be a way of showing that the house desired to further the interests of the Crown by increasing the naval stores.

The regular business of the legislature was carried on during the sessions held in 1723, 1724. Cooke served on the usual committees to hear petitions, deal with the Indians, repair forts and lighthouses, and consider muster rolls. He further investigated and made recommendations on the following:-

1. Admission of town inhabitants.
2. Relief of poor prisoners for debt.
3. Quit Rents of No Man's Land.

1 House Journals (1723-1724), vol.V, p.30
2 Ibid, p.56

appointed to "enquire into the state of the Lodge formerly situated within the township of Barwick, in the county of York, and report what they think proper for this Court to do thereupon".[1] Cooke, with his ally and friend Dudley, were members of that committee which found that instead of felling the trees and cutting them into planks, the residents of Maine were now "boxing and barking" the white pine trees to obtain turpentine. In this report, the committee recommended that the guilty persons be prosecuted and the turpentine seized by the Province. In view of the continued statements of the house of their allegiance to the Crown, it seems rather strange that they should approve the following recommendation: "The said committee are further ordered to lease all such Turpentine Trees as they find Lexed on Province Lands, at reasonable Prices, and the money received therefrom to pay into the Public Treasury".[2] This certainly does not seem to be a way of showing that the house desired to further the interests of the Crown by increasing the naval stores.

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1 House Journals (1723-1724), vol.V, p.80
2 Ibid, p.86

4. Mismanagement of garrisons.

5. Counterfeiting.

6. Records of the province.

7. Encouragement of Linen Manufactury.

8. Public Works on Boston Neck.

9. Defence of the province.

10. Regulation of the army.

The Indian War against the tribes known as the Eastern Indians was declared in 1722. The hostilities continued for two years, closing with the negotiations carried on during the sessions of the Court held in 1724. Cooke was the spokesman for the house in these discussions. Much of the business of the General Court had to do with the war, but few records are to be found to tell what actually took place. Cooke certainly must have directed the actions of the house during the hostilities. In 1723, the Court voted to stop printing votes on the war, consquently many of the records have been unavailable and opinions concerning many of the actions of Cooke and the legislators are speculative.

Col. Dudley now took over much of the routine work formerly carried on under the leadership of Cooke. Dudley reported on many of the petitions and investigated muster rolls during the sessions held in 1723, 1724. Cooke was engaged in other important business at this time.[1]

During 1727, the legislature found several matters of importance to be considered. First of all, the Deputy Surveyor

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of Woods complained that the province did not furnish enough trees for the navy masts. He therefore sought a proclamation to forbid the cutting of trees contrary to the act of Parliament. The legislature also decided at this time to authorize several new townships, which was proposed as a means of strengthening the defence and security of the province, though we have reason to believe, in the light of Cooke's teachings, it was for other purposes as well. The lieutenant-governor was requested to confer with the government of New Hampshire concerning complaints received about the levying of duties on vessels trading on the Piscataqua River. These matters engaged the thought and attention of the legislators at the sessions of the General Court, while Cooke was in England.

In 1729, the Crown determined that further action by the home government was needed to combat the colonial opposition to the Surveyor of the Woods. Parliament therefore passed an act forbidding the cutting of mast trees not growing in any township in the colonies. The act further provided that such trees be marked with a broad arrow to show that they were reserved for the use of the Crown. Col. David Dunbar was chosen as the new Survsyor of the Woods to carry out these provisions. The king also reserved for himself three hundred thousand acres of the best pine and oak then growing in the Province of Sagadohoc, between the Penobscot and Kennebec Rivers. This tightening of the enforcement of the law was found to be necessary to combat the growing tendency of woodsmen to cut mast trees into boards. Neverthe-

less the colonists successfully defeated the policy of the Crown in regard to the cutting of timber in the New England colonies. There was no great dispute in regard to this matter until Dunbar attempted to settle and control the lands around Pemaquid in 1732. It was then that the colonists and Cooke won their greatest victory in their battle against the rights and privileges of the Crown. This dispute is treated elsewhere.

Salary Question

In addition to the controversy over the woods, Cooke felt that the instruction of the Crown to Shute and all succeeding governors to obtain a fixed and permanent salary for the colonial governor was but another attempt of the Crown to trick the colonists into giving up part of their inherent rights, privileges and freedom as Englishmen. Many of the English colonies in America agreed to the English suggestion of setting aside a fixed salary for the officials of the Crown. In Massachusetts, because of the opposition created and sustained by Cooke, this action was not favored. The colonists in this New England plantation saw a possibility of having some control over the executive and judicial branches of their government by controlling the salaries of the colonial officials. The governor was supposed to be the direct representative of the Crown with unlimited power to further the interests of the king, but in Massachusetts his influence was not so strong as the Crown desired. In the final session of 1720, there was a protest by

the governor against the method of supporting him by an annual grant subject to the approval of the colonial legislature then sitting.

Except for the years 1718, 1719, when Shute received 1200 pounds a year, the grant to the governor from 1716 to 1722 was 1000 pounds per annum. Although the council recommended an increase in 1720, the house refused. For the years Shute was in England, he received no pay, although the charter provided in such cases that half the usual amount be granted. In 1723, Shute requested that the Crown pay the salary of the governor of the Massachusetts Bay. The request was not granted at this time. Shute did later receive a pension from the British government, which was derived from the revenue of Barbadoes.

The salary of 1200 pounds per annum, granted by vote of the General Court, was evidently regarded by the governor as sufficient until 1720, when Shute lodged his first complaint. It appears that the bills of credit had depreciated to a great extent in Massachusetts. Since the governor was paid in colonial money, his salary was accordingly lessened. It was Shute's contention that as the money depreciated, his salary should be increased, or that he should be paid in English money which was constant in value. To impress the immediate need of such action, Governor Shute read to the Court the instructions of the Crown in this matter. The king requested that the government set a fixed salary on the executives of the colony, the governor and the lieutenant-governor, sufficient to maintain

the dignity of their offices.

Cooke, who was commissioned to answer the demands of the governor, believed that the allowance granted Governor Shute was sufficient. He also opposed any action as requested, since he felt that it would weaken the position of the colonial government. Since the session was nearly over, and many of the solons had returned to their homes, Cooke suggested that the discussion on the question be put over until the next session. The Court was subsequently prorogued.

Shortly after the governor had called the Court together in 1721, he attempted to control the press. This means of expression, together with the freedom of speech, had been a right and liberty dear to all English people. The colonists rose up to defend their rights at this time. Each move that the governor made caused an increased feeling of hatred against him. The governor now alleged that many papers were published and sold in Boston which were scandalous in nature, bearing attacks on the government. Shute feared that such statements, truth or lies, might incite the people to rash deeds, much to his discomfortture and the displeasure of his Majesty the King. In order to maintain peace and curb malicious tongues, the governor informed the Court that it was the king's order "That no book or paper shall be printed without my License first obtained".[1] To this the people were bitterly opposed. The house, and Cooke particularly, took sides against the attempts of the governor at the attempts of the governor at censorship.

1 House Journals (1718-1720), vol.II, p.359

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1 House Journals (1718-1720), vol.II, p.389

In his speech to the General Court, Governor Shute also reminded the House of Representatives that no action had yet been taken upon the question of a fixed salary, requested by the governor and supported by the king's orders. He again requested the House of Representatives to reconsider the question, reminding them that he was the lowest paid of any of the colonial governors in America.

Cooke, Dudley, and other members of the house were selected as a committee to prepare an answer to the governor's speech. Under the domination of Cooke, the house was evidently willing to defy the demands of the king in the matter of a fixed salary. In doing so, they had the combined opposition of the governor and council.

In his answer to the governor's speech, Cooke suggested that any scandalous or malicious writings might easily be prevented and stopped by suing such authors of any seditious material, after apprehending them, under the libel laws of the province. Such punishment would, in his opinion, serve as a check on any others who might be planning such publications. He bitterly opposed any bill or act which prevented the printing of any book or paper without a license first obtained from the governor as being dangerous and inconvenient.

Cooke also spent considerable time answering the demand of Shute for a fixed salary. Cooke repeated his former stand, that the house considered the present salary, which was gladly appropriated yearly, to be sufficient to maintain the executive

in his proper dignity and station. The representatives and the people of Massachusetts felt that as long as the governor received an annual grant which they believed to be large enough to care for his wants, there should be no complaints or further demands upon them. They were determined to keep their sovereignty and independence of action in the matter. Cooke was also determined to see that the Crown through his representative, the governor, did not strengthen its position in Massachusetts at the expense of the colonial government.

This dispute between Cooke and the lower house on one side, and the governor and council on the other, was the beginning of a long controversy between the representatives of the Crown and the representatives of the people. The discussion continued in the next session of the General Court. Cooke was appointed to serve on a committee whose business it was to review the speech made by Governor Shute before the house at the last session. There was contained therein a specific request or demand for a settled salary, as was the custom among other American colonies. The committee was to frame an answer to the governor's request on this and other matters.

Elisha Cooke, who wrote the reply, was chosen to present it to the house on behalf of the committee. Cooke stated that the first duty of the representatives was to the people, not to the governor, or king's representatives. This statement was made with all due regard for the obligations to the Crown, which were (according to Cooke) well cared for. Cooke criticized the

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action of Shute in hastily dissolving the General Court in March, simply because the house would not acquiesce in regard to the demands of his Excellency. Cooke also charged that the accusations of the governor concerning the lack of due regard for the wishes of the Crown in matters of colonial government were unfounded and false. The house, although not always agreeing to the so-called demands of the Crown as presented by the governor, always took into consideration the obligations due the monarch. All bills and acts were framed and passed with this thought in mind (according to Cooke's way of thinking). A study of the records of the House of Representatives in the early part of the 18th century tends to bear out the truth of this statement.

When Cooke came to the section dealing with the salary dispute, he threw caution to the wind and answered the governor's demands in no uncertain terms. He stated that the governors of the province from the first, up to and including the present incumbent of that office, had always been well treated and financially supported as well as the people of the province could or should provide. In fact Cooke felt that, considering the noticeable drop in trade, with its attendant effects on the financial conditions of the colony, the governor's allowance cheerfully raised that year was sufficient.

Shute was unsuccessful in attaining financial independence in Massachusetts. He never gave up hope, however, leaving the fight with Cooke for his successors to carry on to a close.

Dispute Between New Hampshire and Massachusetts

Several times during the sessions of the General Court of the Massachusetts Bay, questions arose concerning the jurisdiction of the government of New Hampshire over Massachusetts residents, particularly in regard to matters of trade and taxation. Since Cooke had risen to the leadership of the House of Representatives, the members of that body turned to him for guidance in solving the problems which arose. It had been customary for the officials of the Province of New Hampshire to charge a duty of all vessels using the Piscataqua River. The owners of vessels registered in Massachusetts objected to the unjust duties levied upon them, since they were entering ports in Maine, then a part of the Province of Massachusetts.

Cooke was requested to investigate and suggest proper action in the matter, which he did with the customary thoroughness. He decided that the Massachusetts legislature had jurisdiction of its own vessels in the waters of the Piscataqua River, while there for the purpose of loading or unloading at ports under the jurisdiction of Massachusetts. This claim was based upon the rights of Massachusetts as acquired at the time of the purchase of land in Maine from Sir Ferdindand Gorges. Massachusetts at that time acquired not only the territory on the north bank of the river, but the right to navigate on the river. These titles were confirmed with the rights pertaining thereto by the English government in the Charter of 1691, granted to the Province of the Massachusetts Bay.

Since the claims of New Hampshire were thought to be unjust, Cooke suggested that means be taken to have the New Hampshire officials stop such practices. He recommended that fortifications be erected at Kittery to defend Massachusetts interests on the river, and to protect vessels of Massachusetts registry in such waters. He further recommended that a naval officer be assigned there, that all vessels loading or unloading at Kittery be required to enter and clear with the Massachusetts official, and that they be required to pay impost duties to the Province of Massachusetts.

Another dispute arose concerning the jurisdiction of the two governments over certain towns near the boundary between the neighboring colonies. The people of the town of Salisbury entered a complaint at Boston, that they were subjected to the paying of taxes to two governments, namely: Massachusetts and New Hampshire. They therefore sought relief, feeling that the burden of double taxation was an unjust one.

Cooke was asked to investigate the matter for the Massachusetts assembly. He found that several families supposedly living just south of the N. H. boundary between Salisbury, Massachusetts, and Hampton, New Hampshire, were being claimed by the New Hampshire officials as residents of Hampton. Cooke therefore proposed that since the boundary line had been well established and recognized, there could be no doubt at this time (1721) that such persons as above-mentioned were residents and citizens of Massachusetts. They should have been free from any

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duty or allegiance to New Hampshire, according to Cooke.

The General Court of Massachusetts accepted Cooke's recommendations. By a bill entered and passed, they enacted that any person allegedly the collector or constable, acting on behalf of the New Hampshire government, attempting to levy assessments on the people of Salisbury, or seizing their property, be arrested and brought before the judges of Essex County for prosecution. The New Hampshire government was so notified. The officials of New Hampshire denied the charges set forth by Cooke. The boundary line had been in dispute for many years. Several attempts to settle the line (1721, 1729, 1733) failed. It was not until 1740 that the two provinces finally agreed to a line which was in favor of the New Hampshire contentions. It is evident that Massachusetts was in error in attempting to force the issue, for many of the Massachusetts towns had extended their lines more than the three miles north of the Merrimac River, as provided for in the Charter of 1691 as the true boundary. This was once that Cooke lost his point.

Shute Vetoes Cooke as Speaker

Because he had been so successful in moulding and organizing the opposition in the legislature to the Crown and the governor, who was merely trying to carry out the wishes of the king, Cooke was now elected Speaker of the House of Representatives. This was not only intended as a promotion for Cooke, but was an attempt on the part of the representatives to show their dislike for the governor. Governor Shute for personal, as well as for political reasons, vetoed their choice. He also opposed the selection of Nathaniel Byfield and John Clark, who were chosen as councillors, because they were known to be friends of Cooke.

A debate then followed between the representatives of the Crown and the representatives of the people, in which the governor demanded that the house proceed to choose a new Speaker. This they refused to do: "This House have elected a Speaker according to the ancient and undoubted Rights and Usage of the House, and therefore insist upon their Choice".[1] The governor, determined to assert his authority, dissolved the General Court May 30, 1720. For the time being, the governor was victorious, but the dispute was not settled yet.

Before the house met again in July, Governor Shute attempted to defend his stand concerning the exercise of the veto. He stated that Cooke had affronted him, that Cooke was "not only politically hostile to the Governor, but. . . . . was also personally repugnant to him".[2] Shute further stated, "I must. . . . . observe to you, that the person you

1 House Journals (1718-1720), vol.II, p.229
2 Elisha Cooke, "News From Robinson Crusoe's Island," in Colinial Currency Reprints, vol.II, p.121

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1 House Journals (1718-1720), vol.II, p.289
2 Miles Cooke, "News from Robinson Crusoe's Island," in Colonial Currency Reprints, vol.II, p.123

have chosen had invaded the King, my master's rights in the woods of the Province of Maine, though confirmed to his majesty by an act of the British Parliament".[1] The governor believed he had the right to veto the choice of the house for Speaker by the power given him by the royal charter of the province, viz: ". . . . . .we do by these presents, for us, our heirs and successors, establish and ordain, that in the framing and passing of all elections and acts of government whatsoever, to be passed, made or done by the said general assembly, or in councill, (sic) the governor of our said province or territory of the Massachusetts Bay in New England, for the time being shall have the negative voice. . . . . ."[2] He cited further an instance when Dudley had vetoed the choice of a Speaker of the assembly. The Commissioners of Trade and Plantations at that time upheld Governor Dudley. Thus did Shute not only rest his case on an interpretation of the charter, but upon a recent precedent.

The house stood firm in the matter. They did not interpret the provisions of the charter in the same light as Governor Shute. The house denied the right of the governor to overrule their action. Cooke, as spokesman of the house, was defiant in his attack on the governor. He published a pamphlet entitled, A Just and Seasonable Vindication, in which he stated that the house had every right by the privileges granted them in the charter to choose their own Speaker. Cooke believed the veto power extended only to elections of the General Court. The selection of a Speaker was the action of the house only. His

1 Ibid
2 Charter, Laws, etc. of Mass., p.34

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2 Charter, Laws, etc. of Mass., p.34

statement leads us to believe that he saw the governor's veto as an infringement on the right of choice as provided for in the charter.

The dispute continued through the next session. Cooke spent much of his time telling the governor why he was wrong in vetoing the choice of the house for Speaker. In the report of the committee, spread upon the records of the house, we find Cooke's attempt to justify the stand of that house in the previous session, which was approved, viz: "We are apprehensive, there was sufficient authority vested in the Governor, to negative the Speaker of that House. We therefore take this opportunity to assure your Excellency, that this House are very far from giving in to the belief of any such thing, being fully of the same mind as the last Assembly; do entirely Agree and Declare, according to the best Views we are capable of taking; That it is the undoubted Right of the Representatives only, to concern themselves in the Election and Constitution of a Speaker.

"And earnestly hope and desire this Province may never have an Assembly, that will willingly forego such a valuable Privilege which their late Majestys King William and Mary, of blessed Memory, graciously favored this Province with".[1] It therefore irked the representatives from Boston to see the governor attempt to deprive the people of what they thought to be their just rights and privileges.

In the remaining paragraphs of the report, Cooke suggested

1 House Journals (1718-1720), vol.II, p.246-47

to the governor that:-

1) the value of the Public Bills of Credit be supported by joint agreement and action with the other colonies.

2) that paper credit be limited in an attempt to keep the value stable.

3) that plans be made to increase the efficiency of the militia.

4) that truck houses be built by the province to aid in securing new settlements and quieting the Indians.

5) that the province carefully respect all treaties with the Indians.

Relations between the house and the governor had become so strained that he found it necessary to appeal to England for aid on several occasions. When Shute vetoed the choice of Cooke for Speaker of the House of Representatives, he made an appeal to the Board of Trade concerning the rights of the executive in such a matter. The governor now had at his disposal the answer of the home government on this important dispute.

The Board of Trade approved Governor Shute's action in vetoing the selection of Cooke as Speaker. They also upheld the right of the governor of the province to veto or negative elections of the General Court. In the opinion of the Attorney-General, the governor's power of veto extended "to all elections which can be comprized within the words of that clause in the Charter, which are very General and seem to me to Extend to all Elections originally made by the Assembly".[1] This decision of

1 House Journals (1721-1722), vol.III, p.92

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The house immediately entered upon a series of discussions with Governor Shute opposing this opinion. It was their contention that the house enjoyed "the sole Right of Chusing their Speaker, exclusive of the Governor's Negative".[1] This action was well supported by the keen legal mind of Elisha Cooke, who led the attack on the governor. The Attorney-General had stated that the governor's power to veto applied to all elections as provided for in the charter. Cooke brought forth the claim that since the charter made no mention of the election of a Speaker, such election being instituted by act of the General Court, the house claimed and did hold the sole power to choose their Speaker. The governor then realized that he could do nothing further to persuade the house to change its opinion in the matter. Had Cooke not been a member of the house at this time, the governor might have found it easier to change the attitude of the assembly. As a last resort, the governor washed his hands of the whole affair. He had presented his case to the home government, whose answer had not moved the house. He now requested that the assembly prepare their case and present it to the English government in an attempt to establish a legal decision which would be binding on the colonial government. Cooke, who had been chosen Speaker Pro-tempore in the absence of Mr. Clark, was directed to prepare a draught for supplying a person to be sent to England. This decision of the house to furnish a personal repre-

1 Ibid, p.121

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Shute Presents His Case in England

Although Shute had sent his complaints concerning the Massachusetts legislature, and its leader Cooke, to the home government, no action had yet been taken to punish the government of Massachusetts, or to sustain the governor's position. The six years of Shute's administration had been full of discord and turbulent controversies. He could stand it no longer. Having sent his representations before him, Shute now prepared to return to England to enlarge upon them and to defend his position and his policies in the colony.

The first inkling of the governor's intentions was noted in the records of the house for December 31, 1722: "Mr. Cooke from the committee appointed to prepare some proper Vote on his Excellencies sudden Departure, presented their Report thereon".[1] With the house preparing to send their recommendations to the king concerning the controversies with the executive, Governor Shute evidently felt it essential that he appear in person to defend his actions in the American colony. He therefore sailed for England, leaving the lieutenant-governor in charge of the affairs of the province. "He (Shute) suddenly left Boston January 1, 1722/1723 and went to England where he presented his

1 House Journals (1722-1723), vol.IV, p.175

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grievances to the Privy Council. The result of this mission was the issue of the Explanatory Charter so-called, which passed the seals 12 August, 1725".[1]

Upon arriving in England, Shute sent to the king a list of his grievances against the House of Representatives of the Massachusetts Bay. He charged the house with disregarding the authority of the Crown and the governor, his representative in that colony. Shute further charged that the house had adjourned against his will, had assembled again at their own appointed time, and had gained to themselves a control over the movements of colonial troops and the appointment of their commander. Both the house and the council desired to prolong and enlarge their charter privileges. They therefore agreed to send over an agent to England, a man who would defend them against the charges of Governor Shute.

It was imperative that this be done as soon as possible, for Governor Shute had already sailed for London to present his case against the Massachusetts government. Both houses of the General Court realized the seriousness of the situation created by Shute's appearance in England with charges against the colonial government. The house selected a committee, headed by Cooke and Dudley, to join a committee of the council in preparing an address to the king concerning the dispute between the legislature and the governor. This was the first step taken by the members of the colonial legislature of Massachusetts to defend their actions.

1 Col. Soc. of Mass. Publ., vol.VI, p.195n

On October 25, 1723, the house received a communication from the agents in London. This letter contained a copy of Shute's memorial to the king setting for the charges against the legislature. The house, resolving itself into a committee of the whole, took under consideration these charges. Cooke, Dudley, and Clark, the Speaker of the house, headed a committee to answer the charge of Governor Shute, and to prepare an address to the king setting forth their answers and defence in the matter. The same committee was authorized to notify Mr. Agent Sanderson of their action and to instruct him of the desire of the house that a defence be launched against the governor's charges.

The three sessions of the General Court held during the year were very harmonious ones, with both houses working together for the welfare of the country. Cooke served on and directed the reports of the following committees:-

Committee to inquire of the situation at Fort Mary.
" on petitions.
" on salaries.
" on damage done by the Eastern Indians.
" on complaints of soldiers.
" on memorial of Overseers of Harvard.
" on accounts.
" on muster rolls.
" on petition of John Smith.
" on muster rolls at Castle William.

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" on muster rolls at Castle William.

Committee on conditions at Castle William.
" on affairs in Watertown.
" on present to the Five Nations.
" on bill to continue the session.
" to aid in the war with the Indians.
" on bill to change the time of the Suffolk County Court.
" on delegates of the Six Nations.
" on petition of Col Schyler.
" on treaty with the Six Nations (joint action with New York).
" on petitions concerning minister's salaries.
" on the army in the east.
" on mill dams and the regulations of mills.
" on printing of records and laws.
" on vindication of action of the house on Governor Shute's departure.
" on letters to agent in London.
" on petitions of Trustees of School-Ipswich, Mass.
" on journals and letters of Col. Walton.

Cooke evidently examined the accounts of all the military during these sessions. He examined the muster rolls of the soldiers then serving against the Indians and in the various forts of the province, of men stationed on the colonial sloops, to determine whether the amounts requested were correct and sufficient to be paid out as wages for services rendered.

Cooke was virtually Speaker of the House of Representatives during 1722, 1723. He was continually chosen as Speaker Pro Tempore in the place of John Clark, who had been absent during the above-mentioned sessions. Whether the governor liked it or not, this was one way of making the popular idol of the people the presiding officer of the assembly without an opportunity for a veto. With Shute in England, and the leadership of the colonial government placed in the hands of its foremost agitator for home rule, the house prepared to defend its policies before the British authorities.

Cooke As Agent

The General Court realized that the battle would have to be fought in England, where their governor had retired from the terrific and overwhelming attacks of the colonists. In order to successfully defend themselves before the Crown, the colonial government realized that it would be necessary to send over a personal representative who was familiar with the controversy, and able to present their case to the best advantage. The house desired to choose the agent, sending that choice to the board for their approval. The members of the upper house disagreed with this proposal. They sought to have a joint vote on the matter, to send the agent as the representative of the whole Court. As a result of this discussion, the two houses split over the method of defending their rights. The house prepared an address to the king, which was dispatched to England. The council

thereupon prepared and sent an address of its own to His Majesty, presenting the defence of the upper house. The agents in London were notified of all action taken by the legislature so far. Cooke, who was instructed to draw up suitable orders for the agents, sent them the address of the house to the king, and their answer to Governor Shute's charges against the house.

As time went on, the legislature realized the importance of coming to an agreement on the choice of some person to be sent to England to defend the charter of the province. The council suggested that Mr. Dummer would be a suitable and acceptable representative. The house did not desire to leave all the responsibility to this man, whom they had recently attempted to discharge. They therefore voted that Elisha Cooke be elected as agent to join Mr. Dummer and Mr. Sanderson in the fight for the rights of the legislature of the colonial government. The council, with great reluctance, finally agreed to the choice, which immediately received the approval of the lieutenant-governor.

The legislature then unanimously agreed to the appropriation of funds sufficient to send Cooke to England to carry out their plans for the defence of the charter. The vote of December 19, 1723, shows the great responsibility placed upon the shoulders of this young diplomat: "Voted That Elisha Cooke Esq. be and hereby is fully Authorized and Impowred to appear for and represent the House of Representatives in Conjunction with Mr. Anthony Sanderson of London, or in his absence by himself,

to make answer to any complaints that are or may be exhibited against them, either before the King's Most Excellent Majesty in Council, the Right Honorable the Lords for Trade and Plantations, the secretaries of States office, or any other Board or Boards, or in Parliament, and to observe such Directions and Instructions as they shall from Time to Time receive from the House in order to their Justification and Defence, and to use their utmost Endeavors that the Representative body and Inhabitants of this Province, may appear as they truely (sic) are, and desire to be numbered amongst the Most Loyal and Dutiful of His Majesty's Subjects; and that they also endeavor for the Continuance of the Many invaluable Privileges this People Enjoy by the Royal Charter".[1]

Cooke immediately prepared to set sail for England to carry out the responsibility of the task so recently conferred upon him. The next word we hear from him is the record of the receipt of letters from Cooke and Sanderson, dated February 26, 1723/1724, stating that they had already petitioned the king for a hearing to make an answer to the complaints of Governor Shute, which the king had not long since received.

The hearing was held in accordance with the request of the agents of the Massachusetts Bay colony in May, 1724. Cooke and Dummer appeared before the Lords of Privy Council with suitable counsellors to defend the House of Representatives of Massachusetts Bay against the complaints of Governor Shute. The case was heard by the King's Attorney and Solicitor-General. Several

1 House Journals (1723-1724), vol.V, p.302

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matters were heard: first, the question of the woods in Maine; second, the right of the governor to negative the choice of the house of its Speaker; third, the dispute over a fast-day; and fourth, the adjourning of the house without the consent of the governor.

The following discription of what took place at the hearing is taken in part from a letter by John Colman in London to his brother, Rev. Dr. Colman, of Boston: written May 18, 1724.

The question of the woods was first discussed. The argument presented by Cooke at this point was very weak and not well substantiated. Mr. Colman remarked, "I observed Mr. Cooke did not pretend to say, as he used to do in New England, that the King had no right, but said that what they had done was in order to secure the King's right".[1] The counsel for Governor Shute was able to show that by vote of the house, that body denied the right of the king to such lumber, viz: "those logs being cut into lengths which rendered them unfit for his Majesty's use",[2] were to be seized for the use of the province. The point was therefore one on which Cooke could not present a well-founded argument. Furthermore, it was well known that Cooke had always opposed the prerogative of the Crown. The Privy Council thereupon agreed that Shute's charges against the house were well substantiated, viz: "It fully appeared by their own (the house) votes that they did assume to themselves the Power of Disposing of the timber therein mentioned for the use of the Province".[3] The Council decided that even when cut into

1 Mass. Hist. Soc. Coll., vol.II, p.32
2 House Journals (1721-1722), vol.III, p.32
3 Acts of Privy Council, vol.III, p.93,94

logs or planks, the trees set aside for the Crown were still the property of the British authorities, and could be used by the colonists, as Massachusetts had done, only by illegal methods.

The next question considered was the negativing of the Speaker by the governor. The counsel for Cooke tried to show that the house did not deny the right of the governor in the matter. But this was contrary to the votes of the house as recorded in their journals, where they definitely stated that the house only had the right to choose their own Speaker. The governor further charged that at the next session following his negative, the house sent up the choice of their Speaker for information only, not for his approbation. To this charge Cooke made no reply or defence. Mr. Colman stated concerning the veto power, "I confess, though I always condemned the Assembly for choosing Dr. Cooke because they could not but foresee it would be laying a bone of contention in the way between the Governor and the Assembly, I always justified their standing by that choice, for if it be in the power of the Governor to negative one Speaker he may proceed in the same method ad infinitum, and so in effect say, we shall have no Assembly. and over set the constitution at once. . . . . ."[1]. This view would not have been much help to the colonial cause, even if Cooke had presented it. The charges were not successfully refuted by Cooke or his counsel. The Privy Council decided that the governor was justified in negativing the choice of the Speaker, a

1 Mass. Hist Soc. Coll., vol.II, p.33

prerogative which had been established by usage in England. The house, however, was not found guilty of any contempt of the royal authority by their action.

The third charge was that the house had voted a public fast contrary to the provisions of the charter. The Privy Council declared that the governor and council have the power of ordering or issuing proclamations, not the house. The English evidently feared that if the lower house ordered fast days, such orders would have the force of laws, with no chance of a disallowance by the Crown.

Fourth, the house was charged with adjourning for nearly a week without the consent of the governor. The counsel for both sides argued over this point for some time. Once more the defence put forth by Cooke was weak, not much like the loud-spoken and determined opposition of the man who directed the vote of the house on the same matter. He seemed to have had a change of heart after setting foot on British soil; not because he was far from his friends, for he and his cause had friends in England. But Cooke seemed to realize that in comparison with other of His Majesty's colonies which were immediately under the Crown, the Massachusetts Bay fared very well, and had little complaint. In conversation with Mr. Colman, Cooke said he "had greater value for our charter privileges than ever he had".[1] The Council declared that although the governor had the sole power to dissolve, prorogue, or adjourn the General Court or Assembly either as to time or place, the house in this instance

1 Ibid, p.33,34

1 Ibid, p.83,84

had not exceeded its authority in adjourning for such a short time. The Council did state that the house should have notified the governor of the proposed action. The other charges were not so important, and were decided in favor of Governor Shute.

While Cooke and Shute were in England, the House of Representatives of the Massachusetts Bay proceeded to carry on their work under the direction of William Dudley, who was chosen Speaker for the session. Cooke was chosen as a counsellor in May, 1724, the selection being approved by the council and the lieutenant-governor. The records for 1724, 1725, are concerned mostly with notations of letters received from Agents Cooke and Dummer, and notes on instructions to be sent to those gentlemen, to be presented at the hearing before the Privy Council. Committees were also at work investigating muster rolls and petitions in conjunction with the Indian war which was nearing a close in the fall of 1725.

Cooke returned rather unexpectedly to Boston, December 10, 1725. The king's Attorney and Solicitor-General had made their report on Governor Shute's memorial. All the charges were sustained. Elisha Cooke, who had to admit defeat, brought with him for the consideration of the colonial legislature a paper drawn up as a result of Shute's charges. This was called the Explanatory Charter. It provided: "That the person so Elected (as Speaker) shall from time to time be presented to the Governor of our said Province for the time being or in his absence to the Lieutenant-Governor or Commander in Chief of Our said

Province for the time being for his Approbation to which, Governor, Lieutenant-Governor and Commander in Chief respectively We do hereby for Us Our Heirs and Successors Give full power and authority to approve or disapprove of the person so Elected . . . . . .

"And our further will and pleasure is and We do by these presents of Our more Abundant Grace for Us, Our Heirs and Successors, Grant, Ordain, and Appoint that it shall and may be lawful to and for the representatives assembled in any great or general court of our said province for the time being for ever hereafter to adjourn themselves from day to day (and if occasion shall require) for the space of two days but not for any longer time than the space of two days without leave from the Governor. . . . . .(or Lieutenant-Governor) first had and obtained".[1]

Since this was in fact an amendment to the original charter, it required a vote of the people for acceptance or rejection. The General Court heard the reading of the paper. They debated on it for some time, finally accepting it January 14, 1726. It was approved and signed by William Dummer, lieutenant-governor, January 15, 1726. This ended the controversy between Cooke and Governor Shute.

When Cooke arrived from England, he returned to his duties in the legislature. He was not associated with the house during the sessions in 1725, but took his seat in the council. He was continually chosen to committees of this chamber to in-

1 Charter and General Laws of Mass. Bay, p.40

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vestigate trade with the Indians, to confer with the trustees of Harvard College, to provide for the printing of the laws of the province, to consider petitions, etc. His ability and experience, gained while a member of the House of Representatives, was quickly recognized and utilized by the members of the council.

In May, 1726, Cooke was again returned as a member of the council. During the sessions held from May to August 1726, Elisha Cooke Jr. held a prominent position on the committees of the council, which were organized to carry on the routine business of the sessions. The affairs of the province were carried on harmoniously under the leadership of Lieutenant-Governor William Dummer, who still continued to hold the executive position of the province during Shute's absence.

ARRIVAL OF BURNET REVIVES DISPUTES

The house, under the dominating influence of Cooke, had one dispute with William Dummer before he turned over his executive position to William Burnet in 1728. The members of the assembly refused to grant the annual salaries until the lieutenant-governor had signed a bill then pending which provided for an issue of paper money to furnish sufficient funds for fortifications. But Dummer could not very well sign the bill, as it was contrary to the instructions of the Crown concerning the issuance of bills of credit without his approval first having been received. Although the house was desirous of rising, the lieutenant-governor refused to adjourn the Court until some provision had been made for the payment of salaries.

It was only natural that Cooke, who was again elected to serve in the House of Representatives May 28, 1728, should be chosen a member of a committee to take under consideration the stand of the lieutenant-governor in the matter. Cooke was also chosen as one of the eighteen counsellors for the Massachusetts Bay territory; but continued to sit as a representative, retaining the leadership of the lower house on the one hand, and attempting to dictate the policies of the upper house on the other.

Although Cooke was connected with all important committees of the assembly, he was prompt in attending to the work of the committee to answer the governor. He reported that the house felt the issue of the bills of credit essential for the support and defence of the government, as provided for in His Majesty's instructions. It therefore not being contrary to the will of the

ARRIVAL OF BURNET REVIVES DISPUTES

The house, under the dominating influence of Cooke, had one dispute with William Dummer before he turned over his executive position to William Burnet in 1728. The members of the assembly refused to grant the annual salaries until the lieutenant-governor had signed a bill then pending which provided for an issue of paper money to furnish sufficient funds for fortifications. But Dummer could not very well sign the bill, as it was contrary to the instructions of the Crown concerning the issuance of bills of credit without his approval first having been received. Although the house was desirous of trading, the lieutenant-governor refused to adjourn the Court until some provision had been made for the payment of salaries.

It was only natural that Cooke, who was again elected to serve in the House of Representatives May 28, 1728, should be chosen a member of a committee to take under consideration the stand of the lieutenant-governor in the matter. Cooke was also chosen as one of the eighteen councillors for the Massachusetts Bay territory; but continued to sit as a representative, upholding the leadership of the lower house on the one hand, and attempting to dictate the policies of the upper house on the other.

Although Cooke was connected with all important committees of the assembly, he was prompt in attending to the work of the committee to answer the governor. He reported that the house felt the issue of the bills of credit essential for the support and defence of the government, as provided for in His Majesty's instructions. It therefore not being contrary to the will of the

king, the house sought the immediate approval of the lieutenant-governor of the bill that had been proposed.

The lieutenant-governor returned his answer to the demands of the house with a repeated refusal to accede to their wishes. Lieutenant-Governor Dummer stated that he would gladly approve a bill for the issuance of bills of credit to be used for fortifications, which would be raising and settling a public revenue for defraying the necessary charges of the government, as provided for in the royal charter. But Dummer pointed out that the house, by the same bill, planned to emit 40,000 pounds above what was actually needed to maintain the fortifications. This amount the house had planned to let out on loan, contrary to the provisions of the royal charter and the instructions of the Crown.

Cooke, from the committee appointed to answer this charge of the lieutenant-governor, again attempted to show the executive that the bill as passed by both houses of the legislature was a just request, and not contrary to His Majesty's instructions. The lieutenant-governor, however, was firm in his opinion. Since neither side showed any inclination to give in, the house thought it best to seek an adjournment, leaving the matter open for discussion at the next session. Consequently, they voted February 21, 1728, to grant the annual allowance to the officials of the colony. The lieutenant-governor immediately agreed to adjourn the Court until May 29, 1728. Before adjourning, the house selected a committee headed by William Dudley and

Elisha Cooke, "with such as the Honorable Board shall appoint to be a committee in the Recess of the Court, to receive and consider any scheme or projection for the retrieving the value of the Bills of credit, or for making suitable Provision for a Medium of Trade for the Inhabitants of this Province; and the said committee are fully authorized and impowred (sic) to take Subscriptions of any persons for the fulfillment of such Scheme or Schemes".[1] Although Dummer favored colonial interests to a great degree, as soon as he failed to accede to the wishes of Cooke and his friends in the legislature, the harmony of the Massachusetts General Court was upset by the opposer of all "kingly" government, Elisha Cooke Jr.

Since Shute had failed to get along harmoniously with the government in Massachusetts, or carry out the king's instructions without long delays and serious controversies, the British government evidently felt that a new man was needed to take over the administrative duties of the Massachusetts Bay. Lieutenant-Governor Dummer was not successful enough to be considered a likely candidate for the position. They turned to William Burnet, governor of New York and New Jersey, a man who had ruled his people with a firm hand. Cooke was appointed to serve with a committee of both houses to provide a fitting reception and suitable quarters for the governor upon his arrival in Massachusetts.

The house, the council, and the governor were at odds over several matters shortly after Burnet assumed office. Cooke, once more aroused, opposed the new executive. First of all, the gov-

1 House Journals (1727-1729), vol.VIII, p.169

ernor claimed the right to appoint the Attorney-General of the Province, with the advice and consent of the council, who backed him up. Burnet claimed this as a right granted by the royal charter. The house opposed this attempt of the governor to name the official, fearing that he would be but the tool of Burnet in any dispute that might arise. They therefore insisted that the attorney be elected by a joint vote of the houses. This right the house too claimed, under the provisions of the charter. Cooke, Welles, and Wright, all radical members of the assembly, were chosen to be a committee to suggest proper action on the matter under consideration.

Another cause for dispute between the two branches of the Massachusetts legislature was the proposal of the House of Representatives to support the agents in London with financial grants from time to time. The house had continually granted sums of money from the public treasury, to be paid out for the support of the agents in England. The council often refused to concur with the vote of the house. The governor, too, refused to give his approval on several occasions. On August 23, 1729, the house voted that the sum of 500 pounds sterling be paid to the agents, in order that they might continue to be of service to the province. The council refused to give its assent to this grant. Since the executive and his advisory board refused to cooperate, the house felt that it was necessary to take some other means to obtain the funds for the agents. Finally under the leadership of Elisha Cooke, the required amount was raised by popular subscription.

Other items of business during this session, as found recorded in the journals of the House of Representatives, are of lesser importance. Committees were appointed to carry out the king's instructions for repairing fortifications and defences. A committee of the house suggested the registering of sawmills as a means to aid in the better observance of acts of Parliament for the preservation of the forests from which England obtained her naval masts. Cooke was appointed to serve on a committee to aid shippers to escape the burdensome fees exacted by Governor Burnet from vessels in New England waters.

Governor Burnet found it necessary to oppose the house on two other occasions. On one occasion, the members of the assembly desired to receive their pay for the year. A warrant was drawn up, impowering the treasurer to pay the necessary amount. The governor refused to sign this warrant. It was his means of retaliation, for had not the House of Representatives refused to grant him a fixed salary? They had refused to cooperate with him; now the governor decided that he would play the same game. Was this legal? Yes, but certainly a rather mean, unsportsman-like method of paying back his friends (?). The only reason the governor could have advanced for his action was spite.

Salary Dispute

William Burnet had arrived in Massachusetts to assume the office of governor in June, 1728. It was only a month later

that he met the opposition of the house and its leader, Elisha Cooke. Governor Burnet in his speech to the Court, at once recommended that the legislature of the Massachusetts Bay, following the example of the British Parliament and several of the American colonies, provide an "ample, honorable and lasting" settlement or salary upon the executive officers of the province. This request was made in compliance with the instructions of the Crown. These instructions to Governor Burnet contained the orders of His Majesty that the governor immediately request and direct the legislature of the Province of Massachusetts to pass an act providing a "fixed and honorable" salary for the governor. The sum of one thousand pounds sterling per annum was declared to be necessary to establish the king's officers in the proper dignity and independence.

The house debated upon the demands of the Crown as transmitted to them by Governor Burnet. As they had done in the past with Governor Shute, so they continued now to oppose any action for settling a fixed salary on the exeutive. They did, however, grant to the governor the sum of one thousand seven hundred pounds "to enable him to manage the public Affairs of the Government and defray the charges he hath been at in coming here".[1] They also assured the governor, through their spokesman, Elisha Cooke, that although the house would not fix a stated salary, they would make a suitable allowance from time to time to enable him to carry out the affairs of the province with proper dignity.

The governor refused to accept this grant, although it had

1 Ibid, p.251

been passed by the council as well as by the house. Consequently each house entered upon a discussion of the matter. Cooke headed a committee of the house to consider proper action in answer to the governor's stand. The board reminded the assembly that since the former grant had been refused, a new one should be substituted forthwith. The assembly accordingly made a new grant of one thousand four hundred pounds, to enable the governor to manage the affairs of the province, and three hundred pounds to defray the expense of assuming office in the Province of Massachusetts Bay.

Governor Burnet replied to this second attempt to win him over, by stating that he could never accept a grant of this kind from the colonial legislature. It is clear that the English government felt that a system of annual grants made the governor too dependent upon the will of the people. The governor charged that several times in the past the legislature had intentionally withheld the payment of a salary to the governor until it was known what the outcome of a certain bill might be, whether or not the governor would approve the act in question. Such a system did indeed make the position of the Crown and his representative, the governor, less autocratic. The people of the Massachusetts Bay, on the other hand, did not desire to give up any hold they might now enjoy, nor did they desire to lessen their say in the government of the colony. Call this what you like, it surely was a rebellion against the will of the Crown in his attempt to control the colonial government. There were

within the colony, men like Cooke and Dudley, who stirred the people to mass action in behalf of their country as opposed to the welfare of their master, His Majesty, the King of England.

The house still refused to comply with the wishes of the governor. In answer to Burnet, given on August 7, 1728, the house reported that that body had always had great confidence in the executive. They pointed out that the grants made to the governor were voted at the beginning of the session and were not dependent upon his actions. They furthermore stated that there should be a balance between the three branches of the government, with the one dependent upon the others. Why then should the legislature, or either house thereof, allow the governor to become absolutely independent of the legislative body, while he still held certain powers which restricted their actions?

For nearly three months the legislature and the governor hurled speeches at each other, each trying to show why his stand was just, and one which should be complied with. Cooke became the spokesman of the house in these discussions. The records are full of lengthy arguments of both Governor Burnet and Elisha Cooke in support of their respective stand in this controversy.

Finally, the members of the legislature, feeling that the deadlock would continue indefinitely, requested the governor to adjourn the General Court. This he refused to do until they had complied with His Majesty's 23rd instruction for granting the governor a fixed salary. The governor also warned the legislative body that such continued indifference to the instructions

of the Crown would soon bring about some action of Parliament and the disfavor of the king.

In the face of this threat, the legislature continued to hold their ground. They appealed to the people to justify their stand. Cooke was selected as head of a committee to advise the towns of the action taken in the dispute over the salary request of the governor. A lengthy report was printed and distributed to the various towns, a report which included the reasons of the Massachusetts legislature in refusing to consent to the governor's demands, viz: Because it is an untrodden path. . . . .and we cannot forsee the many Dangers there may be in it.

"Because it is the undoubted Right of all Englishmen by Magna Charta to raise and dispose of Moneys for the public Service of their own free accord without any compulsion.

"Because this must necessarily lessen the Dignity and Freedom of the House of Representatives in making acts and raising and applying taxes etc. and consequently cannot be thought a proper method to preserve that Balance in the three Branches of the Legislature, which seems necessary to form, maintain, and uphold our constitution.

"Because the Charter fully impowers the General Assembly to make such Laws and Orders as they judge for the good and welfare of the Inhabitants. . . . . .Moreover, if we should now give up this Right, we shall open a Door to many other Inconveniences".[1]

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1 Ibid, p.318

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Cooke. The governor's answers were clever and sound, but they failed to move the legislature. Even a letter from Agent Dummer, stating that in the face of continued obstinacy in New England, the English government might find it necessary to dissolve the Massachusetts Charter, did not move Cooke or the legislature, which stood by their guns. They would not give up the privileges they had so long enjoyed.

The members of the Court were tired of this continued battle of words. They desired to adjourn, leaving the matter open for discussion at the next session. Hoping that the governor would consent to a recess, if a suitable salary were granted to him, the legislature revived the former grant of 1000 pounds. They even went further, they added to this a sum of 1600 pounds to aid the governor in carrying out the affairs of the government during the ensuing year. Although this generous offer was intended to please the governor and bring about a respite in the hostilities, it had the opposite effect. The governor refused to accept the grant or agree to an adjournment. The additional grant he considered in the form of a bribe, viz: ". . . . .that you would give me a still higher reward for to take His Majesties displeasure off from you and lay it upon myself, which I am by no means inclined to do".[1]

On October 24, 1728, Governor Burnet summoned the members of both houses to the Council Chamber. He then adjourned the Court for one week, notifying the members that the next meeting would be removed to the town of Salem, in the County of Essex.

1 Ibid. p.343

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1 Ibid. p.843

The governor decided to take this action in order that the legislature might be removed from the influence of the people of the town of Boston, people who were not in sympathy with the governor's proposals concerning the demands of the Crown. Governor Burnet's reasons were presented to the house, viz: "I have for some time had but too much reason to think that the general inclination of the Inhabitants of that Town (Boston) was against a compliance with His Majesty's 23rd. Instruction, and that they used endeavors to work upon the minds of the Representatives from the country to bring them into their own way of thinking....."[1] There was some reason to believe this, for a town meeting was held in Boston at which time the people declared themselves to be against the settling of a salary. They voted to make a public declaration to that effect.

The house strongly opposed the moving of the Court to the town of Salem. They gathered there as instructed, but immediately entered their objections thereto. Cooke and others were selected to prepare a vote of protest. This committee brought in a proposal which was accepted as the vote of the lower house, in which that body declared that the express power was granted to the General Court, May 25, 1698, of selecting a meeting place. The legislature also claimed to have the sole right to remove the Court to a different meeting place. The house then requested the governor to resume the meetings of the General Court in Boston as soon as possible. This the house felt was essential, since the governor had moved the Court to Salem only because of

1 Ibid, p.362

unfounded suspicions, according to Cooke and his friends.

The governor turned a deaf ear to their plea. He had good reasons for removing the Court, with sufficient proof of his power so to do. In a message to the house, he answered their contentions that he had no right to move the Court by stating, viz: "As to your Reasons against the Power of adjourning you from Boston to another place, it seems strange to me, that you repeat arguments that were fully debated at a solemn hearing in England, without taking notice that the king in Council determined the Point against you according to the Attorney and Solicitor Generals Opinion, that the sole power of Dissolving, Proroguing or Adjourning the General Court or Assembly either as to Time or Place, is in His Majesties Governor. And that the Reasons against it from the Act of the tenth of King William (an argument used by the house to show that by former recognition of the British authorities the house, and not the governor, had the right to remove the General Court from one place to another) have no real Foundation, there being no Clause in that Act, laying any such Restraint upon the Governor. But in the form of the Writ the word Boston (first meeting place of the General Court) is mentioned, which must be understood by way of Instance or example only, and not to limit the Power the Crown has of Summoning or Holding General Courts or Assemblys at any Place, much less adjourning them from one Place to another after they were Summoned".[1] The argument of the governor appears to be sound. It is only natural that the Lords of Privy

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Council or King's Attorney-General would uphold and support the contentions of the governor in preference to the statements of the house, which would tend to lessen the king's authority over them. Governor Burnet also quoted precedents showing that the Court had three times been removed from Boston to Cambridge by the governor's authority only. This the house denied, except in the case of Shute's action, which was taken under extraordinary circumstances and sanctioned by the legislature, in order that they might escape the plague of smallpox then prevalent in Boston. Still Cooke opposed the governor.

The governor once more returned to the question of settling a fixed and honorable salary upon the king's representative. He urged that the house reconsider their stand, allowing the requested grant without further delay. Burnet stated that since the king appointed the governor, the legislature should support him in the proper dignity, for as the representative of the Crown, the governor was the Crown in the colony. Burnet's arguments as found in the records are as follows: "Besides, as the Charter reserves to His Majesty the right of appointing a Governor, nothing could be more reasonable than to take care. . . . .to oblige the legislature to Support him, that so he may be enabled to serve his master according to the Dignity of his Office. This is no more than what may be expected in Justice and Equity, and the denial of it is an attempt to make the King's Appointment of a Governor ineffectual, and to make him as much dependent on the People, as if he was to be elected by

them".[1] This was in truth what the house desired.

The house now decided to appeal directly to the king concerning his twenty-third instruction demanding a settled salary for the governor. The assembly requested Cooke, Wells, Dudley, Lewis, Chandler, and others to join together in a committee to prepare a memorial to the Crown, setting forth the reason why the house could not accede to the views and wishes of the king in the matter of a fixed salary for the governor. Copies of all the votes and orders of the assembly concerning the subjest were gathered together for shipment to England. A message was forwarded to Mr. Francis Wilks, agent in London, by a committee headed by Cooke, instructing the agent to present the case of the house to the king in Council or any suitable Board or Boards. This he was to do, in order that the English authorities might clearly see why the legislature opposed the loss of such freedom, privileges and rights as they thought they had been guarenteed under the Charter of 1691. The assembly requested Mr. Wilks to assure His Majesty that this action was not an attempt to disown the authority of the Crown over them, who were glad to be counted among his most loyal and dutiful subjects.

The house, council, and governor were now all at odds because of the disputed removal of the General Court to Salem. For two months Governor Burnet urged, cajoled, and threatened the legislature; but under the leadership of Elisha Cooke, the house stood firm. Nothing constructive was accomplished at Salem. Consequently the governor, deciding it was useless to

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1 Ibid, p.370

continue in session, adjourned the Court from December 20, 1728, to April 2, 1729.

During 1729 and 1730, Elisha Cooke led a determined fight among his fellow legislators to join in opposition to the demands of the Crown for a fixed salary. Under the leadership of this dynamic individual, the house, of which he was a member during the two years, stood firm in refusing to accede to the demands of the king as presented to them by the governor of the province.

When the legislature again convened, the governor immediately urged the Court, after such a long recess with a chance to calmly deliberate over their former action, that they ought now to comply with His Majesty's twenty-third instruction. He pointed out that all other colonies which had over them a governor appointed by the Crown, had already consented to the request, New England being the only one to refuse their assent.

The governor's proposal was read to the house. A vote to consider the proposal to settle a fixed salary on the king's representative was turned down by a large majority. Very little business was carried on during this short session which, like the preceding one, was filled with controversies between the house and the governor.

On April 10, 1729, the house voted to supply Mr. Francis Wilks and Mr. Johnathan Belcher, agents in London, with the sum of three hundred pounds sterling to aid them in defending the interests of the colony before the king. The board non-con-

curred with the house in this resolve. Cooke headed a committee to charge the council with hindering the progress of the province at the hearings in England. He also charged the board of having insufficient reasons for opposing the wishes of the assembly. But the council had good reasons for not consenting to their desires. First of all, since Wilks had been chosen by the house only, receiving orders and instructions from them and not the whole Court, he would not be representing the wishes of the council. The board also felt that the memorial of the house to the king might antagonize the British authorities rather than serve the best interests of the province. The board was willing to grant a salary to the present governor for a limited time, an action which the two houses did not agree upon. But the presentation made to the Crown did not represent the wishes of the board, who would be misrepresented at England if they should agree to the proposals of the house.

The house once more decided to appeal directly to the people. They voted to prepare a "Collection of the Proceedings of the Great and General Court or Assembly of His Majesty's Province of the Massachusetts Bay in New England containing several Instructions from the Crown, to the Council and Assembly of that Province, for fixing a Salary on the Governor and their determinations thereon. As also, the Methods taken by the Court for supporting the several Governors since the Arrival of the Present Charter- Printed by Order of the House of Representatives".[1] The preparation of this appeal to the people was left

1 Title of the compilation, printed in 1729.

to the able direction of four members of the house, all representatives from Boston: Elisha Cooke, Ezekiel Lewis, Thomas Cushing, and Samuel Wells. This closed the business of the Court for the session which ended April 18, 1729.

For some time now the house and the governor had been in controversy over the proper and necessary action to be taken by the General Court on the 23rd. Instruction of the Crown. This dispute lasted for more than two years, it being the main subject of discussion in the House of Representatives. Most all of the other business of the legislative body was set aside for the time being until this important struggle could be settled. The dispute began anew in the next session. The governor was bound by his instructions to accept only a fixed and permanent salary, while the house insisted on voting a yearly grant. The threat of the Crown to refer the matter to Parliament, with the probable loss of the charter, did not disturb the members of the house.

This bold stand was occasioned by the reports of the agents in London, Francis Wilks and Johnathan Belcher, who had presented the case of the assembly to the Board of Trade. At the hearing, the house was condemned for not complying with the demand for a fixed salary. At the same time the Lords desired to know if the house would compromise by fixing the salary for the duration of the term of office of the present governor. The agents thereupon recommended new instructions to be sent to the governor by the Crown to accept such a plan.

A hearing was also held before the Privy Council. This body received the recommendations of the Board of Trade concerning the new instructions. The agents felt that the Council favored the case of the people when those representatives of the province quoted the Privy Council as stating: "the People have certainly the Power of raising the Governor's Support, and fixing it or not fixing it, as they judge most for His Majesty's Service and the Welfare of the People".[1] The Council, according to its own records stated that the governor by no means should be made too dependent on the will of the people. They felt that the continual refusal to grant a fixed salary "must be looked upon as acting contrary to the terms of the said Charter and inconsistent with the Trust reposed in them thereby".[2] The final agreement of that body was, that if no salary was fixed, the question must necessarily be taken before Parliament for their judgment thereon. But in the opinion of the agents, the colony had nothing to fear from any action of Parliament. This was the main reason why the house defied not only the governor, but the Crown.

Cooke, as usual, was the leader of discussions with the governor over the question of the salary grant in the May session of the legislature. He was selected to serve on a committee to forward to the Crown a message concerning the dispute with Governor Burnet. The Crown acknowledged the communication which complained of Burnet's actions, but notified the house that it was necessary that the instructions be complied with.

1 House Journals (1729-1731), vol.IX, p.16
2 Acts of Privy Council, vol.III, p.109,110

The Crown backed the governor in his actions in Massachusetts, informing the house that any continued opposition would cause the Crown to lay the matter before Parliament.

Still the house stood firm. They evidently felt that if the rights and privileges they enjoyed were to be lessened, the colonists would not give in without a fight. The members of the house refused to be a party to any act which would bring about their own ruin. At the same time, the house settled a fixed allowance of six shillings a day upon themselves, and ten shillings a day upon the council of the province.[1]

We can appreciate the stubborness of both parties of the controversy, yet our support leans toward the house, the representatives of the will of the people. That body assured both the Crown and the governor that the people, and hence the legislature, were willing to support the governor in his proper dignity. They further reiterated their love and loyalty to the Crown, their Master and Ruler. On August 23, 1729, the house, to show its good faith, revived the former grant to Governor Burnet, voting the sum of 6000 pounds; three thousand of which was his salary for the year past, the remainder an advance grant for the coming year. This certainly showed the willingness of the people of Massachusetts to support the governor, even if it was by yearly grants.

It seems queer that the governor and the British authorities did not accept this compromise (twice the amount demanded for one year) for the time being, preferring to play a waiting

1 Ibid

game. Surely the time would come when the opposition might be less in the colonial legislature, when the British would be able to press their case with little controversy and dispute. By continually refusing to drop their demands, by trying to down a man like Elisha Cooke Jr., by pressing the case to the end, the bitterness of the colonists became aggravated. The British were driving the colonists away from the Crown, not nearer to him, by their instructions to the royal governor. The bonds which held the colony closely united to the mother country were being strained during this period.

The governor at this time warned the members of the House of Representatives that their practice of adjourning from Saturday to Tuesday was contrary to the provisions of the charter. The Explanatory Charter of 1725 stated that the house could adjourn itself without the consent of the governor for the space of two days only. The customary week-end adjournments were for a period of three days; at least that was the contention of the governor who charged the House of Representatives with proceeding in an unlawful manner, contrary to the provisions of the royal charter. Futhermore, he considered their actions needless and expensive. He closed his message to the members of the assembly, viz: "Upon whatsoever mistaken apprhensions, you may have hitherto continued this practice, I expect now that you are warned of it, you will amend it for the future, and if you persist in it, you must not be surprised if it be laid before the Parliament of Great Britain, among other Complaints of Breaches of your

Charter".[1]

Governor Burnet never made his complaints to Parliament. This was contemplated, but the message to the house was the last recorded official action of Governor Burnet. On September 7, 1729, the governor died after an accident. It was only fitting and proper that the Court provide a suitable tribute to their executive. It was therefore voted, "that Mr. Speaker, Mr. Cooke, Mr. Lewis, Mr. Welles, Mr. Cushing, Mr. Bisby, Mr. Wright, and Mr. Lynde, (all men who were the opposition in the lower house during the governor's term of office) with such as the Honorable Board shall appoint, be a committee to consider of and report the Manner and the Method of the Funeral of His Excellency William Burnet, Esq., Deceased".[2] The governor was given a good burial, befitting his station, but the house could not come to an agreement with the council over the salary due the former governor or an allowance to his children.

Upon the death of Burnet, William Dummer, who had served as executive of the province while Shute was in England, again took charge of the government. The lieutenant-governor continued the fight for a fixed salary, even though his sympathies were closer akin to those of the colonists than were those of his predecessor.

Lieutenant-governor Dummer immediately revived the salary question with much earnestness. He recommended that the Court fix a salary upon him for the duration of his administration of the government of the Massachusetts Bay. This was a compromise from the original demand of a permanent salary. Mr Dummer also

1 House Journals (1729-1731), vol.IX, p.66
2 Ibid, p.86

[1] House Journals (1729-1731), vol.IX, p.88

[2] Ibid, p.88

continued the policy of his predecessor by refusing to allow the treasurer to pay the representatives of the province the salary due them. Cooke, as spokesman of the assembly, informed the new executive that the house had not changed its mind. The members of that body still refused, under the direction of Cooke, to fix a salary upon Dummer, but were willing to support him in a manner sufficient to care for his every needs by the usual annual grant. In fact, on November 22, 1729, the house voted a sum of seven hundred fifty pounds to His Honor William Dummer Esq., "for his support to enable him to manage the affairs of the Government ...."[1].

The battle of the house over the choice of the Attorney-General and the granting of an allowance to the agents in England continued under the administration of Lieutenant-Governor Dummer. Cooke and his friends led the discussion of the matters in the house, which took much time, time that ordinarily would be used for more constructive business.

Although Cooke thought Dummer was unreasonable in his demands on the house, he realized that at times the English authorities showed fairness in handling colonial affairs. (He felt this way because their action favored the colonial interests.) An example of this is seen in the instructions sent to Lieutenant-Governor Dummer in 1730. The Crown condemned the method of the house in supplying the treasury by a vote or resolve, instead of an act, as required by the charter. This was an attempt of the home government to chide the house for their illegal or irregular

1 House Journals (1729-1731), vol.IX, p.125

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actions. In the same instructions, the Crown, after hearing the complaints of the house against the late governor's practice of exacting high fees from shipping, ordered that "neither your Our said Lieutenat-Governor, nor any succeeding Governor or Commander in Chief of our said Province of the Massachusetts Bay, do presume to exact or demand any other Fees than what are Legal and have been customarily taken by the Governors or Commanders in Chief of that our Province for Registering of Shipps (sic) or Let-Passes, on any Pretence or Account whatsoever".[1] Certainly the home government was not tyrannical at this time. In the face of such cooperation at home, it seems rather stubborn and radical for Cooke and his friends to oppose the request of the Crown for a stable means of support for the governor.

Cooke, however, even opposed the friends of the late governor, William Burnet, when they petitioned that the Court grant to his heirs the sum long due the late governor for his services. This was sought to care for the children of Burnet, who were now left in the hands of guardians. Although Burnet had received no pay during his administration, and even though the house had been willing to allow him sums from time to time, they absolutely refused to pass favorably on this petition on behalf of the governor's children. It is evident who was to blame for the unfavorable reception of the petition. Several times thereafter the petition was revived, but the house refused to consider it.

Finally, after a year had intervened, the king ordered the Court to settle money on the children of Burnet. On January 1,

1 House Journals (1729-1731), vol.IX, p.214

1731, the house voted to allow the sum of 2500 pounds to the childred of the deceased governor. The board refused to concur with this vote. They reminded the house, that in the year 1728, that body voted 3000 pounds as the salary for the year to the governor. In 1729 the house had again granted 3000 pounds to aid the executive in carrying on the affairs of the government. The members of the board felt that the province homestly owed the children 3000 pounds for the governor's first year's services, and an amount at the same rate for the time Burnet lived beyond his first year's service to the province. This amounted to at least 3400 pounds. Cooke led the house in refusing to grant the sum specified by the board.

On March 23, 1731, the new governor of the province reminded the house of their obligations to the children of the late governor. Belcher, as the executive, joined with the board in requesting the sum of 3400 pounds plus interest (three hundred pounds for long delaying the payment of the money rightfully belonging to the orphans). The house adjourned the same day without voting upon the request. We find a record that on April 8, 1731, the house once more turned down a bill providing an allowance for the heirs of Governor Burnet. How these men could act in so mean and small a manner is beyond explanation. Could there have been such a hatred between the representatives from Boston and the former governor that it turned the hearts of Cooke, Dudley, Wells, and other to stone? Certainly we are justified in condemning their action or inaction in this matter.

Once more, in November 1733, Governor Belcher recommended that the members of the General Court of Massachusetts take the necessary action to supply the children of the late governor with the money long due them. The Court thereupon voted the sum of 3000 pounds to be paid to the executors of Burnet's will, the guardians of the late governor's children.

The Massachusetts legislators, believing that Cooke was showing them a way to overcome the domination of the Crown in provincial affairs, continued steadfast in their refusal to comply with the requests of the governor for a fixed salary. They agreed only that they would support the governor from time to time with the customary grants. They refused to specify the size or frequency of these payments. It can be said though, that since the beginning of the controversy, the governor had received some compensation, with the exception of Burnet, who refused the grant offered him.

The salary issue did not end until the English authorities compromised under Belcher's administration, finally agreeing to the colonial scheme of annual grants.

ATTEMPTS BY BELCHER TO UPHOLD THE POLICIES OF THE CROWN

The English government appointed Johnathan Belcher, who had been a resident of New England and a retired merchant, to succeed Burnet as the governor of the Province of the Massachusetts Bay. In fact, in May 1730, Belcher was commissioned governor of Massachusetts and New Hampshire. At the time of his appointment, he was the agent of the General Court of Massachusetts at London. The members of the house rejoiced at the appointment of a man who would probably "see things their way". A committee of both houses, including in its membership Elisha Cooke Jr. and his friends Lewis, Cushing, and Wells, was appointed to wait upon Belcher, and to congratulate him upon his new office. They were also commissioned to provide a suitable welcome and entertainment upon the arrival of the governor in the Province of the Massachusetts Bay.

During the first few years of his administration, Belcher found that in attempting to uphold the policies of the Crown, he had to face the opposition of the colonial legislature. He had several disputes with Cooke concerning the salary, the issuance of bills of credit, and the supply of the treasury. The dispute with Dunbar over the jurisdiction of lands in Maine also held the attention of the governor and the General Court for several months. The later years of the governor's administration were more harmonious. Belcher remained in the province as the royal governor for seven years, leaving for England in 1737.

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Salary Question

Governor Belcher began his official duties on September 9, 1730, by opening the sessions of the General Court of the Province of the Massachusetts Bay. In his message to the legislature, the governor reminded them that America was his own country, whose interest was constantly before him. At the same time, owing as he did an allegiance to the Crown, Belcher recommended that the Court care for the fixing of a salary on the governor, cause a more strict observance of the laws for the preservation of the royal woods, and provide a sufficient revenue to carry on the arfairs of the government. He referred to the latest instructions from the Crown, giving the colonial government one more chance to comply with the British demands for a fixed salary. If the Court refused, Belcher was instructed to return to England to inform Parliament of the proceedings of the colonial legislature.

This message caused a series of discussions between Belcher and Cooke, the leader of the House of Representatives. Cooke, as head of a committee to answer the governor, recommended that 1000 pounds be granted as a present to the governor to defray the expense of his coming to the province from England. A sum of two hundred pounds was voted the captain of the ship which conveyed the governor to New England. But when the question of a fixed salary was raised, the committee and the house refused to comply with the requests of the governor and the English authorities. The house did vote to grant the sum of 3000 pounds

to Governor Belcher "for his support in Managing the affairs of the Government". This grant was in accordance with the continued stand of the house to grant sufficient sums to the governor from time to time. The council, instead of agreeing with the stand of the lower house, asked for a conference of both houses to consider the new instructions. The assembly agreed to join with the board in discussing the matter, appointing a committee with Cocke as one of its members, to join with the committee of the board.

During the conference, the governor took the opportunity to exhort the Court to comply with the king's wishes. Belcher made a masterful speech. His warning of what would result from the displeasure of the Crown included two statements of the English authorities concerning the province, viz "..... ...their assembly for some years last past, have attempted by unwarrantable Practices, to weaken if not entirely to cast off the Obedience they owe to the Crown, and the Dependence which all Colonies ought to have on their mother country.

".....The Inhabitants far from making suitable Returns to His Majesty for the extraordinary Privileges they enjoy, are daily endeavoring to wrest the small Remains of Power out of the Hands of the Crown, and to become independent of their Mother Kingdom".[1]

It is evident that the British were fearful of losing this largest of their American provinces. From all appearances, the Crown, tired of attempting to bring the colony closer to his

1 House Journals (1729-1731), vol.IX, p.304

domination by exhortation and requests, was now about to threaten force.

The governor reminded the assembly that unless they intended to comply with the instructions of the Crown, the Court would be dismissed and Parliament informed of their proceedings. Belcher urged the house to act wisely. He pleaded with them to comply with the request, inasmuch as they had already reaffirmed their intentions of supporting the governor with an honorable salary and believed all future assemblies willing so to do. The house still refused to give in. They evidently were ready to suffer the displeasure of the Crown and face the attending consequences. The governor thereupon adjourned the Court for two months, hoping that during the recess there might be a change of heart among the members of the assembly. With Cooke still the dominant force thereof, there was little chance of the house reversing its decision. Even after the adjournment, the exhortations of the governor were of no avail. Cooke, speaking for the house, reaffirmed the refusal of that body to comply with the 23rd. instruction of the Crown.

In all other matters recommended to the Court, the house readily assented. They agreed to care for the fortifications of the province, aid in preserving the royal woods, limit the number of bills of credit outstanding, deal with the Indians, suppress vice and wickedness, control the importation and sale of rum, supply the teasury with sufficient sums, fix the boundary betwen New Hampshire and Massachusetts, etc.

On January 2, 1731, when Governor Belcher dissolved the General Court of Massachusetts, as he had promised he would do, he did not immediately notify the English Parliament of the failure of the colonists to comply with the instructions of the Crown. He ordered that the people show their will in the dispute over the question of a fixed salary by choosing a new assembly. In the new General Court which assembled in Boston February 10, 1731, the house contained many of its former members. Cooke was again returned to represent the town of Boston. Upon the urgent request of Governor Belcher, the house again took under consideration the settling of a salary on the governor. They refused, after debate, to allow such a grant. Cooke, Wells, Lynde, Maj. Chandler, Capt. Goddard, Maj. Gerrish, and Mr. Shove were appointed by the house to join with the council in reconsidering the question, on the request of the upper house, which was closer to believing as the governor did in this matter.

After this conference of the members of the General Court, several votes and bills were introduced to grant a fixed allowance to the governor, all of which were defeated. A vote to make a grant for a limited time was also defeated. This refusal to grant a salary for the time being was occasioned by the instruction of the Crown reminding the governor not to accept such a temporary grant. In order that Belcher might be paid for his services, the house requested the Crown to remove this restriction on the governor. Cooke and several of the

representatives from Boston formed a committee to so petition the Crown. They also informed His Majesty of the reasons of the assembly for not complying with the instructions concerning a fixed salary. Cooke believed victory was in sight.

In June 1731, the house voted to allow Johnathan Belcher 2400 pounds for his past services as governor, and the sum of 3000 pounds for his support in managing the affairs of the government. The governor, however, could not accept this grant unless he disregarded the instructions of the king. The house again suggested that the Court petition the Crown to allow Belcher to accept sums of money from time to time. On August 31, 1731, by instructions from the Crown, Belcher was allowed to receive a temporary grant. The Crown stated, however, that in no way was his instruction to secure a fixed salary to be disregarded because of this compromise or leniency of the home government. Belcher was then granted the sum of 5400 pounds before the Court was adjourned.

At the second session, begun December 1, 1731, the governor urged the Court of the advisability of passing a bill for the granting of a fixed salary on the executive of the province. The house received a communication from the governor placing before them the desire of the Crown upon the matter, together with a communication from the agent of the province, Mr. Wilks. The house then ordered the usual group of men, headed by Cooke, to answer the demands of the governor. This committee reported once more that in no way could or should the house come into an

agreement with the views of the governor or the desires of the Crown in the manner of fixing a salary upon the governor. For several years now the colonial government, under the leadership of Elisha Cooke, that agitator for the freedom and independence of the legislature, had successfully opposed the Crown and his representative in the province. The English government, though threatening from time to time, seemed hesitant to take any drastic action. The colonists were ready to take advantage of this hesitancy. With a forceful leader at their head, the people rallied round the representatives from Boston in their fight for the rights and privileges granted them by the royal charter.

The salary question was again forcibly brought to the attention of the house by the message of Governor Belcher delivered to the General Court in 1732. He again requested that a fixed salary be settled upon him. The house, continuing its former policy, as dictated by Cooke, declined to support the governor as requested.

A bill was passed in June 1732, granting the sum of 3000 pounds for the support of the governor for the year. Cooke led the house in its discussions with the governor over the salary question, assuring the governor that they would support him in proper dignity from time to time, but would never grant a fixed or permanent salary. This deadlock between the governor and the legislature continued until Belcher left the province. Because of the desire of the house to control the purse strings, and the determination of the governor to obey the instructions of the

Crown on the matter, the salary dispute took most of the time of the Court. Very little important business was tended to.

During the years 1733-1735, Elisha Cooke Jr. headed various committees for carrying on routine business, but he did not seem to hold the same position as undisputed head of the assembly. He did not exhort the legislators as often as he had heretofore to oppose the governor and all "kingly government". Belcher, in his correspondence, stated that Cooke seemed to be losing his power, viz: "The Assembly shrinks and cowes every day and their hero loses ground among them and has in 10 days past lost several darling points..... I think a little more patience will force 'em into their duty, and things will be growing easier and easier".[1] Belcher continually opposed Cooke, and sought to stem the opposition to the governor's attempt to carry out his obligations. In June 1733, the governor removed Cooke from his place as judge of the Court of Common Pleas for Suffolk County, another attempt by Belcher to lessen Cooke's influence in the province.

After several attempts to sway the legislature to his way of thinking, and after dissolving the Court in April 1733, Governor Belcher finally compromised with Cooke and his friends in the legislature. The Crown had allowed the governor to accept a temporary grant while carrying on the fight for a fixed salary for himself and the lieutenant-governor. On May 31, 1733, Belcher accepted a grant of 3000 pounds, at the same time urging the Court to support the Crown. The house now refused to even

1 Letter to Richard Waldron, dated June 18, 1733, in Mass. Hist Soc. Coll. vol.56, p.303

consider the matter of a fixed salary.

In June 1733, the house again granted the governor the sum of 3000 pounds for the current year. This time the governor did not hesitate to accept the salary provided by the house. Belcher had had a long, hard struggle against great odds. Cooke had opposed any attempt to agree to the wishes of the Crown in the matter of a fixed salary. By 1733, Belcher, realizing the powerful opposition to him, evidently gave up his attempt to change the views of the Massachusetts government. In 1734 and 1735, he again accepted a yearly grant of 3000 pounds without comment. In 1736, the governor reminded the house that the grant of 3000 pounds in bills of credit was no longer equivalent to 1000 pounds sterling. He desired that the grant be increased to care for the difference in the rate of exchange. For the past three years, the governor had agreed to these yearly grants, consent first having been received from England. He was weary of the continued fight with the house. In the latter part of 1736 he appealed to the king to allow him to accept or "approve in the future such annual salary bills as the General Court might pass, provided always the grant come up to the prescribed minimum".[1] On November 7, 1736, the English authorities agreed to the request of Governor Belcher. The governor of Massachusetts in the future was allowed, by the instructions of the Crown, to accept such sums as the General Court might pass annually, provided the salary bill was passed before any other business was acted on during the session. Thus did the colonial struggle to control the purse end

1 House Journals (1735-1736), vol.XIII, p.Vii

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1 House Journals (1735-1736), vol.XIII, p.VII

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Supply of the Treasury

Cooke found one weapon which was used quite successfully in opposing the prerogative of the king during Belcher's administration, much to the discomforture of the governor. It was the power and right of the House of Representatives to make all appropriations of money, a right which had been wielded by the lower houses of all British governments for centuries. In Massachusetts the governor attempted to control the appropriations by influencing the legislators, but to little avail. Under the guidance of Cooke, the house began to withhold its approval of the expenditures sought by the Crown, the governor, and the council.

The supply of the treasury first claimed the attention of the legislature in 1723. Each house desired to control the ways and means of expending the monies of the provincial treasury. The council refused to concur with the house bill on appropriations, which was drawn up by Elisha Cooke. The members of the upper house also claimed that the assembly had from time to time ex-

1 G.E.Ellis, "Royal Governors", in Memorial History of Boston, vol.II, p.34

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pended money without the consent of the council or governor. The council desired the appropriation of a lump sum to be expended from time to time as the board and governor saw fit, thus taking the actual control of the payments from the house. This the house refused to do. After much debate, the two houses came to an agreement and passed a suitable bill for discharging the public debt.

It was necessary at the beginning of every term of the General Court to raise funds sufficient to carry on the business of the government. It was during the first months of Belcher's administration as governor of the Province of the Massachusetts Bay that the dispute took on serious proportions. The house and the council could not agree upon the method of supplying the treasury. Furthermore, the Crown had complained of the irregularity of the house in accomplishing this business in a manner which did not allow for a review by the Crown.

Cooke took the lead in the house, and at the sessions in 1731 proposed that the proper and necessary amount be raised at once. The board non-concurred with this vote. The assembly then called for a conference of both houses, selecting Cooke to head a delegation of the house to attend the conference. The council complained that in recent years the house had attempted to take from the governor and council that authority granted them by the royal charter to issue money to care for the business of the province. They ignored the request of the house to take part in any conference, requesting the house to prepare a new bill. Ac-

cordingly, Cooke and a number of other men were chosen to draw up a suitable bill. The committee reported a draught of a bill for raising the sum of 6000 pounds. But on April 24, 1731, evidently because the governor, the house, and the council could come to no agreement concerning the supply of the treasury, bills of credit, fortifications, a fixed salary for the government, payment of public monies, etc., the governor decided to dissolve the Court and seek a more favorable one.

On May 26, 1731, the new assembly met at Boston. Elisha Cooke and all the leaders of the opposition seem to have been returned to the General Court, where they continued their controversies with Governor Belcher. The governor again urged the legislature to comply with the instructions of the Crown in both the matter of a fixed salary and the supply of the treasury. The house had voted a small amount at the close of the previous session in regular order. The governor expressed his hope that the house would continue to take heed of the requirements of the royal charter.

Cooke once more assumed an important role in the management of the lower house. He was selected to serve with a committee to prepare a new bill for the supply of the treasury, for the amount raised at the last session was inadequate to care for the needs of the government. Cooke also aided in auditing the accounts of the treasurer of the province. Among his other duties during this session were: hearing of petitions, corresponding with Mr. Agent Wilks during the recess of the Court, preparing

instructions to the same official, preparing a bill to regulate mills, overseeing the repairing of fortifications (particularly at Castle William), entertaining and dealing with the Indians, etc.

The governor, in order to conform to the demands of the home government, sought to have the Court call in and destroy bills of credit which were fast becoming worthless. In the face of such a demand, the house passed a bill for the issuance of 50,000 pounds in bills of credit. The council refused to concur thereto, thus saving the day for the executive. Cooke, Lynde, Wells, and Shove, all staunch opposers of kingly authority, upheld the proposed measure in an attempt to change the vote of the council.

Governor Belcher, acting upon orders from his Majesty, the King, attempted to get the legislature of Massachusetts to withdraw some of the paper money, since the attempt to issue more money had been defeated. Both houses of the legislative body refused to accede to his demands. The members of the assembly defied the orders of the governor by again seeking to issue more bills of credit.

The English attempt to control the issuing of currency and the appropriation of money in its colonial possessions in North America was not successful. The people of Massachusetts, especially, opposed this as well as other attempts of the English government to limit the colonial self-government.

This was only one of a series of controversies. In July,

the governor charged that the house had adjourned themselves for three days, a violation of the provisions of the Explanatory Charter, which specified that the house had the right to adjourn themselves for two days only. The house replied that they had adjourned from Saturday to Tuesday (the house was in session Saturday morning), a space of two days. They further argued that since Sunday was not a "Court-Day" the house in fact had been adjourned only for one day. The governor was evidently decidedly displeased with their action, just the same. Although no message is recorded in answer to the contentions of the leader of the assembly, the governor showed his displeasure by immediately adjourning the General Court.

The house still had difficulty in caring for the supply of the treasury. The message of the governor, urging the house to take care to vote in accordance with the charter, was read. Cooke and the usual representatives formed a committee to prepare a statement of the case for presentation to the towns of the province.

In August, the governor called the house to meet with the council, in order that he might address the members of the General Court. At that time he reminded the legislaure that there was no money in the treasury. It was urgent that the General Court immediately pass a bill for the supply of the treasury in order that the soldiers might be paid and all debts be discharged. The governor warned that he would consent to such a bill, only if it was agreeable to the provisions of the charter. For

several days the house and council debated over proposed bills. Amendments were suggested by the leaders of one body, only to be rejected by the other. They reached no agreement. The house therefore voted to address the Crown, setting forth their action and the reasons therefor.

The troublesome dispute over the supply of the treasury continued. The governor reminded the house that the treasury was still empty, contrary to the desires of the Crown, and dangerous for the safety of the province,whose credit would be impaired. Cooke reminded the governor that it was through no fault of the house that such conditions existed in Massachusetts. He pointed out in his report to the house on the demands of the governor, that the assembly had, at the last sessions, passed several bills for the supply of the treasury. Some of these the council could not accept, others the governor refused to sign. Whose fault then was it, if the treasury was not adequately replenished? Cooke blamed the governor.

The house at that time showed how independent they were becoming. The records for June 20, 1732, show that the house considered their greatest and first duty to be to the people of Massachusetts, not to the Crown, viz: "Upon the whole, tho' desirous that the treasury may be supplied, and the public Debts be paid; being very compassionately concerned for those who have served the province; Yet if His Majesty's Instruction, and not what the General Court judges to be for the Good and Welfare of the Province, must be the Rule, we dare not do it, being firmly

of Opinion, that we shall act neither like Englishmen or Rational Creatures, to comply with the instruction and put Money into the Treasury, to be drawn out for we know not what, and when it is drawn out, Tho' never so unreasonable, we can have no relief".[1] It is evident that the house desired to control the affairs of the colony by appropriating sums for specific purposes. They did not intend to give the governor a blank check to be filled out for any purpose he might desire. This decision was the result of the years of constant fighting by Cooke in the legislature to oppose and upset the authority and control of the Crown over the finances of the colonial government. This was a just demand of the assembly, one which has been practiced by the lower house of many governments before and since that time.

The house and the governor continued their argument for nearly a year over the proper way of supplying the treasury and discharging the public debt. On June 30, 1732, the governor sought a new bill, refusing to sign the one already prepared by the house. Cooke, as spokesman of the assembly, debated with the governor and carried on discussions for several months. On December 1, 1732, the house voted to supply the agent in England with suitable sums. They also appropriated a sum of money to repair the forts of the province, in the face of war threats in Europe. On December 16, a new bill for the supply of the treasury was prepared, but was non-concurred by the council. No sufficient action was taken by the legislature until June 1, 1733. The house then voted a sum of 70,000 pounds, but Belcher refused

1 House Journals (1731-1732), vol.X, p.377

to sign the bill, it being inconsistent with His Majesty's 30th Instruction. It was not until November 2, 1733, that the governor agreed to sign a bill presented to him. This bill differed from any previous one, granting the sum of 76,500 pounds to discharge debts and pay salaries due. It was a compromise, the end of a long struggle between two personalities, Cooke and Belcher.

In 1733, James E. Oglethorpe, a member of Parliament, visited the American shores, settling the Province of Georgia as a refuge for debtors and persecuted German Protestants. Upon notification from the agent, Mr. Wilks, that Oglethorpe was planning to stop in Boaton on his return to Great Britain, a committee was selected to provide a reception for him. It was particularly fitting that Cooke should serve on the committee to prepare a suitable reception so "The Government may express their grateful Sense of his (Oglethorpe's) Services to the publick (sic) Interest of the Province"[1], for Oglethorpe was a friend of the colonists. The dispute between the governor and the assembly over the supply of the treasury did not lessen in the face of this notable visit. Since there were no funds in the treasury at the time of the proposed visit, the governor refused to sign the bill passed by the General Court to provide a suitable reception to the Honorable Mr. Oglethorpe. The governor notified the Court that he had invited Oglethorpe to visit with him. He proposed to entertain Oglethorpe in a fitting manner, paying the expense thereof himself, until the Treasury was supplied.

This is a typical example of the annual struggle over the

1 House Journals (1732-1734), vol.XI, p.245

supply of the treasury, brought about by Cooke in an attempt to embarrass the governor and to weaken the position of the Crown. Although he may not have realized it, by causing the transferring of the authority of the Crown from the governor to the hands of the people, Cooke was preparing the scene for and the combatants of an armed revolution.

Dunbar at Pemaquid

Cooke had shown how capable he could be in creating dissatisfaction among the colonists in the matters of finance and governmental control. With the arrival of David Dunbar, who had succeeded Bridger as colonial Surveyor of the Woods, Cooke again turned his energies to another attempt to undermine the last stronghold of the Crown and his friends in the plan of controlling the economic and commercial dealings of the Massachusetts Bay. With his new position, Dunbar inherited the bitter quarrel with Cooke over the timber in the Maine woods. Colonel Dunbar, whom the Crown had appointed as Surveyor of the Woods for New England, claimed jurisdiction over land between the Kennebec and Penobscot Rivers, timber land set aside for the use of the Crown. Dunbar attempted, in 1729, to settle this territory and exert his authority as the representative of the Crown. He desired to become governor of a new province to be carved out of this section of New England. He soon found the Massachusetts government united in opposition. Lieutenant-Governor Dummer had questioned the right of Dunbar to establish a new province in Maine, since

he had produced no royal commission, and since the Charter of 1691 had granted to the Province of Massachusetts all lands wherein Dunbar now proposed to begin his settlement. Elisha Cooke investigated the charges of interference on province land in 1732. Even Governor Belcher felt that the government of Massachusetts had sole jurisdiction over the northern lands. He too, opposed the actions of the Surveyor of the Woods, ordering a military expedition to proceed to Frederick's Fort (formerly Fort Pemaquid) to remove certain Irish inhabitants settled there by Dunbar.

The whole province was now aroused, and joined with Cooke in opposing Dunbar's attempt to gain control of Pemaquid. The house commissioned Cooke to prepare a message to the king in defence of the claim of the Massachusetts government, under the charter, to jurisdiction of the land in Maine. Colonel Dunbar had also extended his activities to the lands to the eastward of the Kennebec River, which the house complained of very vigorously.

The king, upon recommendation of the Privy Council, ordered the governor to abandon any attempt to send troops into the Maine lands until the Attorney-General had passed upon the right of Massachusetts to title and jurisdiction over the land in question. Cooke thereupon charged Dunbar with purposely misrepresenting the colonial government at England in order to bring about the displeasure of the Crown.

The land under dispute had been granted to the residents of the colony at an early date by the New England Council. Several families held ancient deeds and titles to plots of land in the

district north of the Kennebec River. Some of the inhabitants had bought the land from the Indians, others had been granted titles by the Council of Plymouth. Dunbar claimed that these grants were invalid, and in many cases of doubtful legality. He also claimed that the land had reverted to the Crown, after the war with the French, and that His Majesty had the right to issue new grants to any party. This was an erroneous opinion, however, for in 1700 the English government had refused to grant lands at Pemaquid upon the petition of the Earl of Limerick, stating that they had no power to grant titles to land in the Province of Massachusetts. The Privy Council also decided in 1732 that all the land between the Kennebec and St. Croix Rivers had been granted to Massachusetts. The governor and the General Court had the sole right to make any grants therein, subject to the approval of the Crown. The charter of Massachusetts, dated and granted in 1691, gave the power of government over the land in and around Pemaquid to the Massachusetts Bay.

The Privy Council, in discussing the capture of the territory by the French, stated that the government of Massachusetts had not been guilty of a lack of defence at Pemaquid; and that the capture of the land by the French did not extinguish titles, but only suspended property rights. The Council informed Dunbar that the Crown had no power to appoint a governor over the lands in question, nor could Dunbar grant any lands thereinwithout an approbation of the charter of the Massachusetts Bay. The only way to remove the powers of the Massachusetts government was to

repeal the charter.

For several years the government of Massachusetts had encouraged settlements at or near Pemaquid. The legislature of the province, under the provisions of the charter, governed that section until 1696. The Indians had several times swept down upon the settlement and destroyed it. In 1698 the territory became a part of the French colonial system, having been seized during a short Indian War. In 1710 the British recaptured the fort. The continual warfare and raiding by Indians made it difficult to maintain a permanent settlement in these sections. When peace had once more been established, the owners of the disputed lands attempted to resettle their claims. A group of men formed an association to accomplish this. Among the stock holders were: Colonel Hutchinson, Mr. Waldo, Mr. Walcot, Mr. Savage, and Elisha Cooke. This probably explains why Cooke was so interested in preventing Dunbar from gaining control of the rich lumber lands in Maine. The attempt of this group to stop Dunbar was frustated at first by the insistence of David Dunbar of his right to grant titles and have jurisdiction of all eastern lands. He threatened to drive out all except his own settlers by armed force. Dunbar claimed: ". . . . .he had powers and Directions from the Crown to dispose of all lands lying to the Eastward of the Kennebec River, upon certain Conditions and Limitations, and no one Person should settle there but by and under him".[1]

The speculators who had attempted to settle, build sawmills and exploit the well wooded section, appealed to the General

1 House Journals (1731-1732), vol.X, p.386

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Court to stop the interference of the Surveyor of Woods. The legislature informed these men that courts had been established in the county of York where they could sue or be sued. The legislature therefore recommended that the case be set before the justices of that section for settlement. Prayers for relief did not change the situation.

The case was then taken to the Crown. Dunbar agreed to await the direction of the Crown before pressing his claims. The Privy Council reviewed the dispute. Dunbar claimed jurisdiction of the lands on royal grant supposedly made to him. The government of Massachusetts claimed the sole right of jurisdiction since:

1. The charter granted to the Massachusetts Bay jurisdiction over the territory.

2. The land had been settled and held for some time under the protection of Massachusetts.

3. Courts of justice had been established there by Massachusetts.

4. A member of the council had been continuously chosen for that district.

5. The appointment of a governor over that part of the province would be an abrogation of the charter.

Cooke and Waldo decided to press their claim before the Crown. They sought a clear title to a large portion of the land in Maine. Cooke felt it impossible to say much about the situation, since he had been the champion of the people's rights in

the Province of Massachusetts. Since Cooke had constantly opposed royal control over the province lands, he could not very consistently petition the Crown to exert any authority on his own behalf. Waldo set sail for England to defend the rights of the Boston capitalists who were speculating in the disputed area for personal profit. The Privy Council allowed that Massachusetts had jurisdiction over the Sagadahoc territory. Waldo was also successful in defending the title of himself and associates to the land claimed by them, receiving a large part of the lands for his services. Dunbar was defeated.

Cooke, Waldo, and Dunbar, who decided that he could gain more by joining Cooke than by fighting him, now united to carry out their plans for exploiting the Eastern lands and opposing the executive of the province. Belcher believed that Dunbar was seeking to replace him as governor, which was no doubt true. Cooke, as the enemy of Belcher and the Crown, was aiding Dunbar in his ambitious plan for the removal of Belcher in 1733. It was the beginning of the end for this representative of the Crown who was so graciously welcomed upon his arrival in New England. Belcher realized this, as is evident from his correspondence: ".....You have no doubt long before this heard that Mr. Cooke is become my inveterate enemy, and has lately made a journey to N. H. to pay compliments to Coll. Dunbar, at whom he has had a most malicious enmity 'till now and joins him for no other reason but hopes to hurt the Governor and Sam Waldo is going home with the same designs".[1]

1 Letter to Richard Partridge (Dec. 25, 1733)- "Belcher Papers", in Mass. Hist. Soc. Coll., vol.66, p.443

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Cooke severed his alliance with Belcher when the latter attempted to get the consent of the legislature to the instruction of the Crown for a fixed salary. Under his direction, the representatives attcked the governor and made his life miserable during the latter part of his administration. Like his predecessors, Belcher returned to England(in 1737) with the realization that his failure was due in no small measure to the efforts of Elisha Cooke.

CONCLUSION

Cooke, who had not been in the best of health for several years, now found it necessary to give up much of his work in the legislature. In 1735 he retired from active participation in the political affairs of the province. There were no outstanding issues to defend or attck in 1735; there was no longer any real opposition in Massachusetts to the colonial interests. The Province of Massachusetts Bay could afford to give her outstanding leader a much needed rest. The salary question was decidedly a victory for Cooke and the provincial government, the woods were being exploited by the Boston merchants in greater numbers, thanks to the efforts and example of Cooke, the house controlled the purse once more, and the governor had only a few vestiges of administrative power which the foe had been unable to wrest from his hands.

As a result of his fervent belief in the independence of the colonial government, Cooke fought the governors and their advisory boards, the colonial commissioners of the British Parliament, and even the Crown itself, in order that the people might be sovereign.

Elisha Cooke died in the fall of 1737. His death and the departure of Belcher as governor of the province mark the closing of a political era in the history of the Massachusetts Bay. Cooke, like his father, influenced by the traditions and the desires of the early radicals of the New England colonies, continued the fight which had its start centuries before in the British

CONCLUSION

Isles. It was through Cooke that the spirit was kept alive and transmitted to such patriots as Adams and Otis. The younger Cooke moulded the wills of the colonists of his generation into the spirit of freedom, independence, revolt, and rebellion.

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